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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 OMEGA SA, *et al.*,

4 Plaintiffs,

5 v.

12 Civ. 6979 (PAC)

6 375 CANAL, LLC, *et al.*,

7 Defendants.

Trial

8 -----x

New York, N.Y.
February 25, 2019
9:05 a.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 WILMER CUTLER PICKERING HALE & DORR LLP

Attorneys for Plaintiffs

16 BY: ROBERT J. GUNTHER JR.

ISLEY MARKMAN GOSTIN

17 CHRISTOPHER R. NOYES

18 DENTONS U.S.LLP

Attorneys for Defendants

19 BY: STEPHEN G. DELLA FERA

-and-

20 TROUTMAN SANDERS LLP

21 BY: AVI SCHICK

22
23 Also Present: Sarah Finkel, Paralegal
24 Clinton Lam, Technician
25

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1 THE COURT: Is Mr. Schick here?

2 MR. DELLA FERA: He's in traffic, your Honor. He
3 should be here in another two, three minutes.

4 THE COURT: I know you want to take up the letters
5 that we received over the weekend.

6 Do you want to take up anything else, Mr. Della Fera,
7 while we're waiting for Mr. Schick?

8 MR. DELLA FERA: No, your Honor.

9 MR. GUNTHER: Your Honor, we have some other issues;
10 but if you want to do the letters first or we can raise other
11 issues now. Whatever your preference is.

12 THE COURT: I think I'll wait another five minutes for
13 Mr. Schick.

14 MR. GUNTHER: Okay.

15 MR. DELLA FERA: Thank you, your Honor. We appreciate
16 that.

17 (Recess)

18 MR. SCHICK: I apologize, your Honor.

19 THE COURT: We did say 9 o'clock, didn't we, Mr.
20 Schick?

21 MR. SCHICK: My apologies. I got stuck in traffic,
22 your Honor. I apologize.

23 THE COURT: You have to allot for that.

24 The first order of business is to take up Mr. Joshua
25 Paul as a trial witness.

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1 Mr. Gunther, do you want to go first?

2 MR. GUNTHER: Yes, your Honor.

3 So, your Honor, I think, from our perspective, what
4 this really comes down to is that if we do not call him as a
5 witness, and assuming he's out completely, we would not intend
6 to call him as a witness. Basically what's left is then the
7 defendants would be calling him as a witness solely to impeach
8 him.

9 Now, what they've said -- they've offered a couple of
10 justifications as to why what they have -- their proffer for
11 him is relevant, even if we were not going to call him. And
12 they said, Well, it's relevant to chain of custody.

13 And what we've said in the letters to you and what
14 we're planning to prove in this case, your Honor, is that the
15 watch that we have in our possession is, in fact, a watch that
16 was purchased in May of 2012 at 375 Canal Street. We're going
17 to do that by putting on the investigator, Leslie Quinonez, who
18 purchased the watch; the investigator who led the
19 investigation, Brad Cole, who was there and took possession of
20 the watch afterwards; and then we're going to call Mr. Foster,
21 who was the Swatch employee who was going to match up the watch
22 we have with a photograph that Mr. Cole took right after the
23 purchase, shortly after the purchase.

24 And Mr. Foster is going to be able to say that the
25 watch in our possession is the same as the watch in that

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1 photograph. And that is how we are going to prove -- we are
2 not doing it in terms of this person handed it to this person,
3 this person handed it to that person.

4 So they say they want to put Mr. Paul on because
5 Mr. Paul had possession of the watch for a significant period
6 of time.

7 Now, of course he's an attorney. Had he not been
8 dismissed from the case under the circumstances we're all aware
9 of, they wouldn't have called him with respect to that issue at
10 all. And so what we are left with, your Honor, is what they
11 want to do is they want to put him on the witness stand. They
12 have never deposed him. So they are going to ask him
13 questions, I presume, about the chain of custody. And what
14 he's going to answer is, I had the watch; I had it in my
15 possession for whatever period of time. And ultimately that is
16 transferred to our firm, when we took over the case. That's
17 what I believe his testimony will be.

18 So then having done that, which is all, again,
19 undisputed, your Honor, what they really want to do is use this
20 as an effort to bring up not only the issues with respect to
21 the declarations with the inaccurate statements -- and
22 remember, your Honor, we're putting Mr. Cole on the witness
23 stand; they will be able to talk to him about that, that's a
24 subject of your motion *in limine*. They are going to call some
25 of the other investigators. To the extent there are issues

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1 with those declaration, they can do that.

2 But, your Honor, what they should not be able to do is
3 to take the attorney and really just run him over the coals,
4 not only with respect to the inaccurate statements in the
5 declarations, but, your Honor, what I believe they also want to
6 do is to go further than that and to say that -- and to bring
7 up the issue of whether or not he should have disclosed the
8 inaccuracies when he discovered them to the Court sooner than
9 it ultimately came up.

10 Your Honor, that opens up, as I said in the letter, a
11 host of other issues, including whether he did that properly or
12 not. And again, we just see that as a complete trial within a
13 trial, the main purpose of which is to impugn Mr. Paul and, by
14 extension, impugn Swatch.

15 And so, your Honor, for all of those reasons, we think
16 if we do not call him -- and we do not intend to call him if he
17 will not be a witness -- that he should not be able to be
18 called by the other side solely to impeach him.

19 THE COURT: Mr. Shtick.

20 MR. SCHICK: A couple of points, your Honor.

21 First is we continue to have difficulty understanding
22 how it can be that Mr. Paul is relevant if they choose to call
23 him, but he's not equally relevant if they make a strategic
24 decision not to call him and we do call him.

25 Now, your Honor, this is not a case in which they

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1 listed Mr. Paul and we said we reserve the right to call
2 anybody who plaintiffs have on their list. We affirmatively
3 placed Mr. Paul on our witness list on January 14th of this
4 year and provided it to the plaintiffs. We then had a
5 meet-and-confer about the witness list and potential for
6 motions *in limine*. Plaintiffs did not make a motion *in limine*
7 to preclude Mr. Paul, who was on our witness list.

8 With regard to the chain of custody, your Honor, this
9 is a case in which the testimony will be Ms. Quinonez, who was
10 a school teacher, had a watch for five minutes.

11 She had that watch --

12 THE COURT: She purchased the watch, right?

13 MR. SCHICK: She purchased a watch that day. She
14 purchased six watches that day. And she had them for a few
15 minutes, put them in a handbag, and gave them to Mr. Cole.
16 Mr. Cole had all six watches, and he had them for two, three
17 days. And then he transmitted all those watches in one package
18 to Mr. Paul.

19 Mr. Paul had those watches for five years. And this
20 is all prior to the Wilmer firm coming in. Prior to the Wilmer
21 firm coming in, Mr. Paul transmitted a watch to Mr. Foster and
22 said this is the watch that was bought at 375 Canal Street, not
23 the five other watches which were in the same box, but this
24 one, and had him identify it. That's August 2017, prior to
25 this firm.

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1 So clearly he's relevant to chain of custody, your
2 Honor.

3 Your Honor will see that the chain of custody here
4 involved Ms. Quinonez and Mr. Cole putting the watch in a
5 Ziploc bag with a Post-It note. There's no tag, identifying
6 tag or anything that would have said this is the watch.
7 There's a Ziploc bag and a Post-It note.

8 So surely, your Honor, we have the ability to call
9 Mr. Paul to question him about the watches that he received,
10 the jumble of watches that he received, which all sat in a
11 single cardboard box in his office; and how he then determined
12 which one to give Mr. Foster. He only gave Mr. Foster one to
13 look at. We certainly have the ability to do that.

14 Beyond that, your Honor, Mr. Paul was the single
15 witness who can talk about the various different buys that he
16 authorized with respect to 375 Canal Street that came back
17 unsuccessfully. He was the single person who is the focal
18 point of all of them. Some of them were carried out by Paul
19 Stone-Jansen, some of them were carried out by William
20 Quinonez, some of them were carried out by Brad Cole. But all
21 of them reported up to Mr. Paul.

22 THE COURT: But for that incident that occurred when
23 we were getting ready, the almost final pretrial conference,
24 Mr. Paul would not have been a witness; is that right?

25 MR. SCHICK: That is probably the case. But they

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1 wouldn't have put him on their list either, your Honor. And
2 they didn't make a motion *in limine*. I don't understand how it
3 could be that we are reopening the whole process of motions *in*
4 *limine* with respect to witnesses.

5 They made eight motions *in limine*, your Honor.
6 Mr. Paul was on our witness list. He is the chain of custody
7 in this case. He is the person who authorized the
8 investigation in this case. He is the person who told Brad
9 Cole what the scope of what they are looking for in this case
10 is. He is that single person. And he's not an attorney in
11 this case. That wasn't our doing. That's their doing.

12 And they did not complain about it, your Honor, at any
13 point until the moment, your Honor, when you said that their
14 motion *in limine* with respect to whether his misconduct can be
15 brought up, at that moment they said, Well, why is he a witness
16 in this case at all? There was no dispute. Both parties
17 understood that he was a central witness. They listed him; we
18 listed him. They didn't even bother to seek a motion *in limine*
19 to preclude him from testifying.

20 It would be enormously prejudicial at this moment for
21 your Honor to say that plaintiffs have the sole right to choose
22 who can testify; plaintiffs have the right for a second shot at
23 motions *in limine*, when they didn't do the first set of them.

24 THE COURT: All right. I've heard enough.

25 I've gotten four letters, two from Wilmer Hale, one

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1 from Troutman Sanders, that's Mr. Shtick that came in, I read
2 that this morning; and one from Dentons on Friday night from
3 Mr. Della Fera.

4 I believe that the preparation of declarations from
5 the third-party investigators and Mr. Paul's decision regarding
6 disclosure accuracies which led to the incident of 2017 are not
7 relevant to the trial. Accordingly, I'm going to preclude
8 defendant from calling Mr. Paul at trial if plaintiffs do not
9 call Mr. Paul as a witness in the case on trial. We made it a
10 supplement to motion *in limine* No. 8. Mr. Paul cannot be
11 called.

12 Okay. What else do we have before we resume?

13 MR. GUNTHER: Thank you, your Honor.

14 MR. SCHICK: So, your Honor, if we don't raise the
15 misconduct, we can still call him?

16 THE COURT: Pardon me?

17 MR. SCHICK: First of all, I must say -- I'll try to
18 make a record later -- the fact that the Court is reopening
19 motions *in limine* for one party in this case and not the other
20 is extraordinarily prejudicial.

21 But second of all --

22 THE COURT: You said that in your argument. I heard
23 you say it. You said it again.

24 MR. SCHICK: Second of all, your Honor, we have a few
25 other motions *in limine* which we'll try to bring on tonight

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1 with respect to Mr. Taute, other considerations which we think
2 should have been decided differently and weren't. But now that
3 the Court has reopened them, we might. We'll speak to the
4 Court afterwards if we have the ability to do that.

5 But with respect to Mr. Paul, since your Honor said
6 that the thing that can't be called is his preparation of the
7 affidavit, a reversal of the decision that your Honor made last
8 Tuesday --

9 THE COURT: It's not a reversal of the decision I made
10 last Tuesday. The ruling is final.

11 You want to make a record, Mr. Shtick?

12 MR. SCHICK: Can we call Mr. Paul and not bring up
13 that affidavit?

14 THE COURT: No. He's precluded.

15 MR. GUNTHER: Your Honor, may I raise a few other
16 issues?

17 THE COURT: Yes.

18 MR. GUNTHER: Some of these are housekeeping, your
19 Honor, so they'll hopefully go quickly.

20 I just want to introduce the Court to Ms. Carol
21 Aubert. And I'd ask Ms. Aubert to stand up. She is going to
22 be our corporate representative from Swatch at the trial, your
23 Honor. And we had the back-and-forth about Mr. Foster. We
24 took what your Honor said quite specifically, and we're not
25 going to have him be our corporate representative.

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1 THE COURT: All right.

2 MR. GUNTHER: Your Honor, what we will do, what we
3 understand -- I talked to Mr. Della Fera this morning --

4 THE COURT: Tell me again who the corporate
5 representative is.

6 MR. GUNTHER: Yes, yes. It's Ms. Carol Aubert. She's
7 legal counsel --

8 THE COURT: Carol, what's the last name?

9 MR. GUNTHER: Excuse me. A-U-B-E-R-T.

10 THE COURT: Aubert. Okay.

11 MR. GUNTHER: And she's legal counsel from the Swatch
12 Group in Switzerland, which is the parent company of Omega.

13 Your Honor, I understand from talking with counsel for
14 the defense that they are going to use one of the other Laboz
15 brothers, not Albert Laboz, who will be a witness; they are
16 going to use one of the other Laboz brothers as the corporate
17 representative. We don't have an objection to that.

18 THE COURT: Okay.

19 MR. GUNTHER: Your Honor, the second matter -- we
20 informed plaintiffs about -- sorry, defendants about this last
21 night. With respect to one of our trademarks, this was
22 Plaintiff's Exhibit 2. And your Honor, the trademark
23 registration number is 577415.

24 Your Honor, we made a decision to drop that particular
25 trademark. We are still going forward with the other four.

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1 And the reason we did that, your Honor, is that while it was a
2 registration that was enforced at the time of the purchase in
3 May of 2012, subsequent to that, it is a mark that related to
4 certain -- a certain type of way the mark is depicted on
5 watchbands that is no longer used by Omega. That lapsed, that
6 trademark registration lapsed.

7 And so given that, your Honor, we made the decision to
8 drop that. We informed the other side last night. It does not
9 affect -- we've looked through your pretrial jury instructions.
10 The fact that we drop that one mark does not affect your
11 pretrial instructions.

12 It does affect your final jury charge on page 11,
13 where it says five Omega marks, and it will be four. And then
14 on the verdict form I think we need to make a correction there.
15 We can provide those to Mr. Gonzalez after court today but,
16 your Honor, but I wanted to advise the Court of that change.

17 THE COURT: Okay. 577415 is the first trademark
18 listed on the special verdict form.

19 MR. GUNTHER: I believe that's correct, your Honor.

20 THE COURT: That's out?

21 MR. GUNTHER: We would obviously take that out. We
22 would change the reference to five Omega marks on page 11 of
23 your final instructions to four Omega marks.

24 Your Honor, a third housekeeping measure -- and I'd
25 like to introduce -- we have a jury consultant with us today,

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1 Matt McClendon. He's in the back. Matt, could you stand up
2 for a second?

3 Your Honor, at jury selection, what we would propose
4 to do is just have Mr. McClendon come up and sit at counsel
5 table. We wouldn't presume to introduce him. We would
6 obviously not bring up the fact that he's a jury consultant.
7 We'd ask that no one bring up that fact. He'll help us with
8 respect to that issue and then he'll go back into the back.
9 And we just wanted to make sure you were okay with that.

10 THE COURT: All right.

11 MR. GUNTHER: Your Honor, one last thing. Well, maybe
12 not last. We have a gentleman here I want to introduce,
13 Clinton Lam. He's sitting over to the left. He's our tech.

14 THE COURT: Mr. Lam.

15 MR. GUNTHER: Mr. Lam.

16 And so Mr. Lam is going to help us put things up on
17 the screen and whatnot.

18 We don't know whether or not the other side has a
19 tech. We're willing, within reason, if they need something
20 that we've put up back up. But what we wouldn't want, your
21 Honor, is them kind of co-opting Mr. Lam and using him as their
22 tech. Again, we'll help where we can, but we don't want --
23 what we wouldn't want is in front of the jury them saying, Hey,
24 can you get this, can you get that. If they have their own
25 tech, they should have them do that.

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1 THE COURT: Mr. Shtick, do you have your own tech?

2 MR. SCHICK: We have Ms. Sarah Harris Finkel, who is a
3 paralegal at our firm and who will be handling those matters.

4 THE COURT: Usually people work out on this
5 cooperatively. There hasn't been a problem.

6 MR. GUNTHER: I don't think there will be.

7 THE COURT: I assume that you will. You will
8 cooperate.

9 MR. GUNTHER: We will, your Honor. We will totally
10 cooperate.

11 And your Honor, I have a list which I can hand up of
12 some exhibits that as to which -- plaintiffs' exhibits as to
13 which there is no longer any objection; and that we would
14 propose, with your Honor's guidance, to move in in front of the
15 jury, maybe just sort of at the beginning or at an appropriate
16 point, and just sort of get those into the record so that we
17 don't have to do that as we use those exhibits with witnesses.

18 THE COURT: Mr. Schick.

19 MR. SCHICK: Your Honor, we have a problem with one of
20 them, but not as to the rest of them. And the one we have a
21 problem with is 228. It is true that there was a mistaken
22 omission when we prepared our list. On the other hand, they
23 prepared a list of 180 and have withdrawn most of them in the
24 mess of so many of them. With respect to all others but that
25 one, your Honor, we would not have any problem.

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1 MR. GUNTHER: Your Honor, given that Mr. Schick has
2 raised that issue, we'll work with him on that one, and we
3 won't try to put that one in at this time.

4 THE COURT: All right.

5 MR. GUNTHER: Your Honor, I think that there are some
6 remaining objections to exhibits that will be used with the
7 opening and exhibits that may come up today in the course of
8 testimony. I think it's fair to say that we don't have any
9 objections at this point, do we?

10 MR. NOYES: That's correct, your Honor. We don't have
11 any objections to the materials that Mr. Schick indicated they
12 were using during their opening statement. But there are some
13 objections to our opening presentation we provided to the
14 defendant last night. And with your permission, I can pass up
15 a copy of our presentation.

16 THE COURT: All right.

17 MR. NOYES: So, your Honor, we provided our opening
18 presentation which Mr. Gonzalez is handing to you.

19 So this consists of, your Honor, demonstrative
20 exhibits to assist the jury to understand the substantive
21 evidence, as well as exhibits that we believe in good faith
22 will be admitted in evidence during the trial.

23 The defendant has some objections. They indicated to
24 us that they object to any slide that includes an exhibit they
25 have objected to previously, and also any slide that they say

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1 was previously -- includes a document that they say was
2 previously undisclosed. As I understand it that also includes
3 standard demonstrative exhibits.

4 So they haven't given us a page or slide-by-slide
5 objection. To the extent they still have objections, we would
6 ask the Court to resolve those now so we don't have them during
7 the openings.

8 THE COURT: What do you object to, Mr. Schick?

9 MR. SCHICK: Your Honor, we actually had a
10 conversation, Mr. Noyes wasn't able to join in, but we made two
11 points during the meet-and-confer last night.

12 The first was that with respect to any exhibit that is
13 objected to and that has not been worked out, it's certainly
14 prejudicial for them to throw it up on the screen and show it
15 to the jury because it's not an admitted document.

16 In addition and moreover, your Honor, if one looks
17 through this, you'll see that while your Honor previously has
18 said that this is not a case about other buildings and it's not
19 a case about other brands, with limited exceptions, what we
20 object to is entirely about other buildings and other brands.

21 We have not objected to any part of this which
22 reflects a document or an exhibit to which we have no
23 objection, which is many, many, many pages, and they know that.
24 So while it's true we haven't said specifically which page we
25 object to, we gave them the more than dozen pages that we don't

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1 object to.

2 So, for example, your Honor, PDX -- page 8, page 9,
3 page 10 are just listings of buildings managed by United
4 American Land with no relevance to this case at all. Your
5 Honor has precluded even counterfeiting.

6 THE COURT: Where are the numbers?

7 MR. SCHICK: On the bottom right, your Honor. I'm
8 sorry.

9 THE COURT: PDX 1-2. PDX 1-8, is that the one that's
10 marked PX 222 and has three buildings on it?

11 MR. SCHICK: Yes, and a list of buildings. And that
12 goes on for several pages, your Honor.

13 Your Honor has previously ruled with respect to
14 motions *in limine* that even evidence of counterfeiting of
15 another building is inadmissible; and yet here they just want
16 to inflame the jury about, I don't know, the fact that --

17 THE COURT: Inflame or inform?

18 MR. SCHICK: Inflame, your Honor. United American
19 Land owns many, many buildings, your Honor.

20 MR. NOYES: Your Honor, may I address the other
21 buildings objection?

22 THE COURT: This is an opening statement, right?

23 MR. NOYES: That's correct.

24 THE COURT: To educate the jury.

25 MR. NOYES: That's correct, your Honor.

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1 And all the evidence we've cited we believe we have a
2 good-faith basis to admit and offer in evidence during the
3 course of the trial.

4 But with respect to the other buildings in particular,
5 your Honor, your jury instructions correctly point out that the
6 deterrent effect on others besides the defendant is relevant to
7 statutory damages. And as you know, your Honor, we are only
8 pursuing statutory damages in this case.

9 The evidence with respect to the other buildings, in
10 particular, PDX 1-8, 1-9, PDX 1-10 all relate to -- are all
11 relevant to that issue of statutory damage and deterrent effect
12 on others besides the defendant.

13 MR. SCHICK: I don't understand that at all, your
14 Honor. Every address on Canal Street is a building.

15 The fact that there are eight buildings or whatever
16 number they have here that are managed by United American Land
17 for which there is no evidence going to be admitted about any
18 counterfeiting activity, I don't understand how that goes to
19 their statutory damages case, unless they want to say, your
20 Honor, affirmatively that there are all these buildings and
21 there's only counterfeiting at one.

22 But it seems to be creeping very close, your Honor,
23 again to going back on your prior ruling with respect to the
24 inadmissibility --

25 THE COURT: What else do you have, Mr. Schick? I

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1 understand your objection to that.

2 MR. SCHICK: There are also, your Honor, a whole
3 series of photographs with respect to watches that we've never
4 seen before that are maybe high resolution and never produced
5 that are relevant. We have a problem with PDX 1-17, 1-22,
6 which has not been authenticated.

7 THE COURT: What's 1-17?

8 MR. NOYES: Your Honor, 1-17 is a chronology timeline
9 that I will walk through during our opening statement of events
10 which we believe we will prove during the course of trial.
11 Again, it's a demonstrative exhibit to assist the jury.

12 THE COURT: Okay. 1-17. What else?

13 MR. SCHICK: 1-23. 1-22, your Honor.

14 THE COURT: I don't have 22 or 23. I skip from 1-17
15 to 1-24.

16 MR. NOYES: Your Honor, I apologize. PDX 1-17 repeats
17 a few times in the slide deck because during the presentation
18 the chronology will come up event-by-event. But for
19 completeness, we provided the slides to complete the
20 chronology.

21 THE COURT: I see.

22 So what do you object to, Mr. Schick?

23 MR. SCHICK: 1-22 has not been authenticated. 1-23.
24 1-24 they purport to inform the jury of the law in this case,
25 which I believe is your Honor's job. 1-25 is another

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1 demonstrative. This is a whole bunch of buildings managed by
2 United American Land.

3 THE COURT: Okay. What else?

4 You can sit down.

5 MR. SCHICK: And 1-26, which I'm not sure what
6 building it even is, we therefore previously objected to. It's
7 299 Canal Street, your Honor.

8 THE COURT: What is 1-26 a picture of?

9 MR. NOYES: Your Honor, 1-26 is a current picture, a
10 recent picture of 299 Canal Street. And that is one of the
11 properties that the Laboz brothers, United American Land, owns.

12 THE COURT: What's the relevance of 375?

13 MR. NOYES: Again, that is relevant, your Honor, to
14 the deterrent effect on the defendant and others. The point
15 is, your Honor, that not only 375 Canal Street is owned by the
16 defendant, but other stores in the Canal Street area is owned
17 by the defendant.

18 MR. SCHICK: Your Honor has already ruled that even
19 evidence of counterfeiting activity at other buildings are
20 inadmissible. So I don't understand how they get in --

21 THE COURT: 1-26 is excluded. You can't use it in the
22 opening statement. You can try to admit it during the course
23 of the trial, but --

24 MR. NOYES: Thank you, your Honor.

25 THE COURT: Anything else, Mr. Schick?

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1 MR. SCHICK: Your Honor, again, here, in this case the
2 name of presumably Mr. Laboz certainly and United American Land
3 was well-known to plaintiffs even before the case was
4 initiated, certainly during discovery.

5 There are no claims against Mr. Laboz, any of the
6 Labozes. There are no claims against United American Land.

7 They certainly could have brought those claims if they
8 thought they had them. But instead here, your Honor, this is a
9 claim about counterfeiting of Omega watch only at 375 Canal
10 Street. Your Honor previously ruled that they can have a
11 limited amount of evidence with respect to other buildings.

12 But here it seems like they are trying to put United
13 American Land on trial; they are trying to put Mr. Laboz on
14 trial. And that's contrary to the complaint they filed and
15 it's contrary to your Honor's prior rulings.

16 THE COURT: Okay. 1-26, this can't be used in the
17 opening statement.

18 What are the other ones, Mr. Schick?

19 MR. SCHICK: 1-25.

20 THE COURT: 1-25 can stay in.

21 1-8 and 1-9 are going to come out.

22 MR. NOYES: Apologies, your Honor. I didn't hear
23 exactly what you said with respect to 1-8 and 1-9.

24 THE COURT: 1-8 and 1-9 cannot be used in opening.
25 That's without prejudice. You're trying to get the statements

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1 in during the course of the trial, but not during the opening.

2 Anything else, Mr. Schick?

3 MR. SCHICK: Yes. 1-24, which is their attempt to
4 supplant your Honor with respect to telling the jury what the
5 law is.

6 THE COURT: Yes. This is a legal interpretation.
7 This is what you need to establish, contributory trademark
8 infringement. It's mentioned in my preliminary instructions,
9 and certainly it's covered in my final instructions, and it's
10 in the form jury verdict. So 1-24 is out.

11 MR. SCHICK: Your Honor, just a couple more.

12 I believe 1-22, which has never been authenticated.

13 MR. NOYES: Your Honor, with respect to
14 authentication, again, we believe we have a good-faith basis to
15 authenticate those exhibits at trial.

16 THE COURT: 1-22 will stay in.

17 MR. SCHICK: And 1-23, your Honor.

18 THE COURT: Is that a watch too, Mr. Schick?

19 Same ruling.

20 MR. DELLA FERA: Your Honor, I was going to make a
21 point about 1-22. That's a picture of a physical watch.
22 PX 100 isn't as an exhibit in evidence, but it's the physical
23 watch. PX 100 isn't a picture of a watch. This is an entirely
24 new picture we know nothing about, when it was taken, who took
25 it. Presumably the person who took it isn't going to testify

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1 to authenticate it at trial.

2 MR. SCHICK: They put a label on this picture, but
3 that's not PX 100 actually.

4 MR. NOYES: Your Honor, it's a photograph of the watch
5 that we will offer in evidence and it is a demonstrative
6 exhibit.

7 THE COURT: It stays in then.

8 Anything else from the defendants?

9 MR. SCHICK: Your Honor, two issues, one that I'll
10 address, one that Mr. Della Fera will address.

11 THE COURT: Okay.

12 MR. SCHICK: With respect to the first, as your Honor
13 is aware, when this case was filed there were two plaintiffs,
14 there was Omega and Swatch. And there were claims regarding
15 Omega trademarks and claims regarding Swatch trademarks. The
16 Swatch trademark claims were dismissed or withdrawn, and that
17 should leave only one plaintiff, Omega.

18 For reasons we do not quite understand, plaintiff
19 counsel seems to refer repeatedly to plaintiffs Omega and
20 Swatch. Now, your Honor has previously ruled, for example,
21 that we cannot talk about dismissed claims, we should not talk
22 about there were seven trademarks at issue, now this morning
23 there are three; there were two brands, now there's one; there
24 were various different claims, now they've been withdrawn.

25 That's fine, your Honor, we respect to that and, of

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1 course, we'll abide by it. By the same token I don't know how
2 since there are no Swatch claims they can now refer to
3 "plaintiffs" as opposed to just plaintiff Omega.

4 THE COURT: Mr. Gunther.

5 MR. GUNTHER: Your Honor, Swatch is the corporate
6 parent of Omega. And the witness that we have here, the person
7 that we have here is who's going to be our corporate
8 representative, is an employee of Swatch Group, which is the
9 owner of Omega. And so I think it's perfectly reasonable --
10 we're not going to be standing up and down and jumping up and
11 down about Swatch. But the fact is there remain two plaintiffs
12 in this case, one the corporate parent of the other. We think
13 that's appropriate.

14 MR. SCHICK: They don't own the trademarks, your
15 Honor; they weren't in the case as a parent. A parent is not a
16 proper party, as your Honor would know when people try to get a
17 removal at times.

18 There's a plaintiff in this case, it's Omega. They
19 voluntarily withdrew this watch claim because they couldn't
20 prove it up. So they shouldn't be able to have it both ways,
21 your Honor.

22 THE COURT: I think that's right, Mr. Gunther.

23 MR. GUNTHER: Your Honor, again, in the opening --

24 THE COURT: Talk about Omega.

25 MR. GUNTHER: We'll talk about Omega.

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1 Can I introduce Ms. Aubert with her correct title?

2 THE COURT: Yes.

3 MR. GUNTHER: That's fine.

4 That's all I need to do, your Honor.

5 MR. DELLA FERA: And then, your Honor, we just have
6 one point on the instructions after the jury selection. We
7 have other points we wanted to make about the jury charge; we
8 think it's appropriate to raise that after the trial has ended.

9 The only point we have with the instructions after
10 jury selection relates to the instruction on page 8 --

11 THE COURT: Wait a minute.

12 Okay. Mr. Della Fera, where are you?

13 MR. DELLA FERA: Page 8, your Honor, the final
14 paragraph that begins --

15 THE COURT: Let me get to page 8.

16 "Your job on this trial is to determine two things"?

17 MR. DELLA FERA: Yes, your Honor.

18 And you say, First you must determine whether a
19 tenant, subtenant or occupant directly infringed -- excuse me.
20 I'm reading what I would propose. But you had said, First you
21 must determine whether it's contributory infringement; and then
22 second you must determine whether or not damages should be
23 awarded. And we think that that's slightly incorrect, your
24 Honor. If there is no contributory infringement, then there is
25 no need to determine damages.

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1 And we would propose that the jury be instructed that
2 first they must determine if there was direct infringement;
3 second, if you determine direct infringement, you must
4 determine if there is contributory infringement; and then if
5 you determine contributory infringement, you must determine the
6 amount of damages. We just think it's a slightly more accurate
7 reflection of the law, your Honor.

8 THE COURT: Okay.

9 MR. GUNTHER: And, your Honor, we've had this
10 discussion with your Honor several times going back even before
11 we were counsel. Your Honor has consistently ruled that direct
12 infringement need not be shown and that we can proceed directly
13 to contributory infringement which is consistent with the
14 cases. I think your pre instruction --

15 THE COURT: That's the law of the case.

16 MR. GUNTHER: That's right.

17 And, your Honor, I think it should stay.

18 MR. DELLA FERA: Your Honor, I'm not sure I understand
19 that that's the law of the case. Your Honor has previously
20 ruled that direct infringement is relevant. We had motions *in*
21 *limine* relating to the risk of consumer confusion, because that
22 is a factor that goes directly to direct infringement.

23 THE COURT: If it's counterfeit there's presumed
24 confusion, right?

25 MR. DELLA FERA: And they have argued in the motions

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1 *in limine* that counterfeiting hasn't been established, and that
2 therefore they need to provide the factors in the jury
3 instructions regarding confusion by consumers. And your Honor
4 included those in the jury instructions.

5 And just as a point of fact, direct infringement is a
6 necessary predicate of contributory --

7 THE COURT: So what language do you want,
8 Mr. Della Fera?

9 MR. DELLA FERA: Our language would be that your job
10 in this trial is to determine two things. First you must
11 determine whether a tenant, subtenant or occupant at 375 Canal
12 Street directly infringed on one of Omega's trademarks.
13 Second, if you find direct infringement upon four or more of
14 Omega's trademarks, you must determine whether 375 Canal
15 contributed to that direct infringement. Then if you find that
16 375 Canal contributed to the infringement of Omega's
17 trademarks, you must also determine the amount of damages to be
18 awarded to Omega.

19 I think that's completely accurate and comports with
20 the *Tiffany* standard, your Honor.

21 MR. GUNTHER: And, your Honor, just a last point on
22 this. What they are trying to bring in is that we didn't sue
23 the subtenant. And it's all stuff that your Honor has already
24 looked at and ruled on.

25 What you have in here, which was after they had

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1 proposed exactly what Mr. Della Fera is reading to you now, is
2 the correct statement of the law. It's law of this case and it
3 should stay.

4 MR. DELLA FERA: Your Honor, just one final point, if
5 I may.

6 Discussing PDX 1. If you look at PDX 1-1, the first
7 page. That includes documents that go to the brand value.
8 Again, that's a factor that was brought up by plaintiffs
9 regarding direct infringement and consumer confusion
10 specifically.

11 And regardless of what plaintiffs may think about what
12 we are going to argue at trial, the fact remains that the
13 standard is that there must be direct infringement first, then
14 there must be contributory infringement, and then they go to
15 damages.

16 THE COURT: Have you looked at the final instructions?

17 MR. DELLA FERA: Yes, your Honor.

18 THE COURT: This is consistent with the final
19 instructions, isn't it?

20 MR. DELLA FERA: It is, your Honor. And we do have
21 points about the final instructions that we thought would be
22 best to raise after the trial ended, we would make those same
23 points there.

24 THE COURT: You can raise it again.

25 I'm going to deny your objections to the preliminary

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1 instructions. It's going to stay the way it is.

2 MR. SCHICK: Your Honor, if that's the case, why are
3 they bringing all of this evidence in with respect to
4 Mr. Foster, Mr. Cole -- they are going to show him a watch that
5 was counterfeit -- if they don't have to prove direct
6 infringement?

7 THE COURT: Why don't you ask Mr. Gunther?

8 MR. SCHICK: Why is that admissible in this trial?
9 Why isn't that a trial within a trial, your Honor?

10 THE COURT: Listen, let's get something straight in
11 the beginning here, Mr. Schick. I've given you this material
12 in advance so that you can object. I've considered your
13 objections. I've ruled. Please don't then engage in debate.
14 I made my ruling. That's the ruling. I don't want sidebar
15 conferences. I don't want extra argument about why I'm wrong.
16 You know what the rules are. Make your objection; I make my
17 ruling; we go on to something else.

18 MR. SCHICK: Your Honor, I didn't mean -- that came
19 off the wrong way. My apologies. I meant to suggest then, in
20 light of that ruling, it would be inappropriate for plaintiffs
21 to put on the evidence that they discuss with respect to
22 whether the watch is counterfeit, that's all. And I can object
23 at the time.

24 THE COURT: Okay. We've checked with the jury clerk.
25 We won't have a jury -- it will 10:15 or 10:20 at the earliest.

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1 Anything else to take up?

2 MR. GUNTHER: Your Honor, there still are some
3 objections to exhibits that we intend to use today with the
4 witnesses that we expect to get on the witness stand. And
5 we're happy to do -- we're happy to do it however you want,
6 your Honor. We can actually qualify the exhibits and move them
7 into evidence or we can work out the objections now. We're
8 happy to do it either way.

9 THE COURT: We have time. Do you want to do it now?

10 MR. GUNTHER: Sure.

11 MR. NOYES: With respect to our first witness, your
12 Honor, which will be Leslie Quinonez, there are some objections
13 to exhibits we intend to offer through Ms. Quinonez, and the
14 first of which is PX 100, your Honor, Plaintiffs' Exhibit 100.

15 Your Honor, that's the physical watch, the counterfeit
16 watch that was purchased at 375 Canal Street. We intend to
17 show it to Ms. Quinonez and I'll have her authenticate it.

18 Defendant's objection I understand is lack of
19 authentication. So, again, we will do that through
20 Ms. Quinonez. I don't know if there's anything else for the
21 Court to address at that time with respect to that exhibit.

22 THE COURT: Mr. Schick.

23 MR. DELLA FERA: That's fine, your Honor. She can
24 authenticate it; she can authenticate it. If not, we'll object
25 at that time.

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1 THE COURT: All right.

2 MR. NOYES: And with respect to Plaintiffs' Exhibit
3 104, which is the photograph of the watch, which is also in our
4 opening slides, that's another authentication issue. We will
5 show that to Ms. Quinonez. And your Honor, in the opening
6 slide presentation, that is PDX 1-22. It's a photograph of.
7 PX 104.

8 THE COURT: What is the background?

9 MR. NOYES: Your Honor, after Ms. Quinonez turned the
10 watches over to Mr. Cole, Mr. Cole took them and photographed
11 them. And Ms. Quinonez will testify that the yellow sticky
12 note in the picture, that's her handwriting, that she included
13 that with the watch, and that the watch was put in that Ziploc
14 bag with a red line on it, as well as the black plastic bag.

15 MR. DELLA FERA: Your Honor, as Mr. Noyes just said,
16 Ms. Quinonez didn't take this picture; this picture doesn't
17 have a time stamp on it. We don't believe that she's capable
18 of authenticating it. Perhaps Mr. Cole is, but if we are
19 talking about Ms. Quinonez specifically, we don't think she is
20 capable of authenticating this picture.

21 THE COURT: It all depends on her testimony, doesn't
22 it?

23 MR. DELLA FERA: It does, your Honor.

24 We don't seek a ruling now on that issue; we would
25 raise the objection at that time, see what she says.

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1 MR. NOYES: Your Honor, I think the same issue is with
2 respect to Plaintiff Exhibit 108A. That is a video, your
3 Honor, that Ms. Quinonez took during the investigation at 375
4 Canal Street. We will show her a portion of that video and
5 have her authenticate it and, with the Court's permission,
6 offer it and publish it to the jury.

7 MR. DELLA FERA: Again, your Honor, it would just be a
8 matter of what the testimony is, whether or not she is going to
9 authenticate it. We were just reserving our objection.

10 THE COURT: Okay.

11 MR. NOYES: The final exhibit that we intend to use
12 with Ms. Quinonez is Plaintiffs' Exhibit 246, your Honor. And
13 that's an email that Ms. Quinonez wrote to Mr. Cole after the
14 investigation on May 19th, 2012. And that is a summary of the
15 investigation that she prepared.

16 Ms. Quinonez will be on the stand and testify about
17 the fact that she prepared the email, that she prepared it
18 while events were fresh in her memory. And for those reasons
19 we would offer that in evidence.

20 MR. DELLA FERA: Your Honor, Plaintiffs' Exhibit 246
21 is also on defendant's exhibit list. We don't object to
22 PX 246.

23 THE COURT: Okay. That takes care of Ms. Quinonez.

24 MR. NOYES: That does, your Honor. Thank you.

25 MR. GUNTHER: Your Honor, now there's one other

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1 witness and I've got a couple of exhibits with respect to that
2 witness, and this is Mr. Cole. I think I can do this based on
3 the discussion we just had relatively quickly, your Honor.

4 There are five exhibits: Plaintiffs' 106, Plaintiffs'
5 107, Plaintiffs' 108, Plaintiffs' 108C, and Plaintiffs' 108D,
6 all of which are either photos or videos that Mr. Cole took and
7 will authenticate on the witness stand.

8 The only objections are authentication. We'll lay the
9 appropriate foundation. If they have an objection after we do
10 that, they can raise it; but I think we're in the same boat
11 with respect to those.

12 MR. SCHICK: That's fine, your Honor.

13 MR. GUNTHER: Your Honor, the last exhibit is Exhibit
14 240. And that's a report that Mr. Cole made shortly after the
15 May 12th, 2012 purchase of the watch at 375 Canal, as well as
16 the other purchases that the investigative team made that day.
17 We're going to qualify that as a business record that he
18 regularly creates in the course of his work and keeps. And we
19 would move that in under 803(6).

20 MR. SCHICK: Your Honor, that truly was created in
21 anticipation of litigation, so I'm not sure it would qualify as
22 a business record. Of course, I assume they are going to ask
23 him about it.

24 THE COURT: He's an investigator, though, isn't he?
25 That's what investigators do.

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1 MR. GUNTHER: That's right, your Honor. Exactly.

2 THE COURT: So you can make your objection at the
3 time, Mr. Schick.

4 MR. SCHICK: Thank you, your Honor.

5 MR. GUNTHER: And your Honor, I think that does it for
6 today.

7 THE COURT: All right.

8 Now, you have Quinonez and Cole today.

9 MR. GUNTHER: Yes. And, your Honor, just so that we
10 make sure we don't run out of witnesses today, we'll have
11 Mr. Foster available if we fly through things. I'm not
12 anticipating that will happen, but he will be available if need
13 be.

14 If we have Quinonez and Cole today, and that's as far
15 as we get, then we have a witness who we have subpoenaed,
16 Mr. Taute, who is a former detective, police detective. The
17 plan would be for tomorrow to have him testify first, and then
18 have Mr. Foster testify if he hasn't already done so.

19 THE COURT: Okay. And witnesses after that, Mr.
20 Gunther?

21 MR. GUNTHER: Your Honor, I think that after that we
22 have Ms. Caponegro, who is an employee at a law firm who is
23 going to get in the notices, a selection of the notices of
24 counterfeiting that were provided to the owners of 375 Canal
25 Street over a period of time. Ms. Gostin is going to put

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1 Ms. Caponegro on.

2 Sharyn Tritto, who was an outside counsel for the
3 Laboz brothers, we're going to put certain documents relating
4 to notice in through her. And then we're going to call
5 Mr. Laboz as our final witness to deal with notice issues and
6 things of that nature.

7 THE COURT: So you have, what, all told, six
8 witnesses?

9 MR. GUNTHER: That's correct.

10 THE COURT: Mr. Schick, how about you?

11 MR. SCHICK: I think in addition to those we've
12 mentioned, we are going to call Paul Stone-Jansen, who is an
13 investigator who conducted a failed buy; and Mr. William
14 Quinonez.

15 MR. GUNTHER: And, your Honor, I think I miscounted.
16 I think we had seven actually when you add up those numbers.

17 THE COURT: I miscounted.

18 MR. SCHICK: Your Honor, there certainly will be
19 issues to discuss with respect to Mr. Taute. If he's going to
20 go first tomorrow, we have time now, we can discuss it now or
21 we can discuss it tomorrow morning. I just raise the issue.

22 THE COURT: What are your issues with Mr. Taute?

23 MR. SCHICK: Primarily, your Honor, they intend to try
24 to admit as a business record an email that he sent from his
25 private email account to Mr. Josh Paul.

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1 THE COURT: When did he do this?

2 MR. SCHICK: In 2007, while he was an officer of the
3 New York City Police Department. 2010, I'm sorry, your Honor.
4 December 7, 2010.

5 THE COURT: What's your objection?

6 MR. SCHICK: It's not a business record of the New
7 York City Police Department if somebody sends an email from his
8 private email account to an attorney who wasn't involved in the
9 case at all. It's just not a business record. Obviously if
10 you can authenticate it, you can authenticate it, but it
11 shouldn't come in as a business record.

12 THE COURT: Yes.

13 MS. GOSTIN: Your Honor, the document Mr. Schick is
14 referring to is an email that takes information from the New
15 York City Police Department Peddler's Task Force arrest log and
16 merely puts that into an email and sends it to Mr. Paul. And
17 Mr. Schick also mentioned that it was from a personal email
18 account.

19 Mr. Taute will testify that at that time regular
20 patrol officers did not have official email accounts, those
21 were only for detectives and other higher-up members of the
22 police department; and that they were instructed to use their
23 personal email; and that that was in the course of his business
24 as a police officer to send that email -- or to send that
25 information by email to Mr. Paul.

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1 THE COURT: Mr. Della Fera.

2 MR. DELLA FERA: Just on that point, it sounds like
3 there's a double hearsay problem here. There's information in
4 these emails taken from another database or document. And I
5 believe that potentially that document that Mr. Taute looked at
6 is a business record. But a private email using his
7 verizon.net email account sent to an attorney for a private
8 party certainly does not qualify as a business record.

9 MS. GOSTIN: Mr. Taute will also testify that because
10 Swatch was a complainant for these counterfeiting crimes, that
11 that's why they were supposed to be part of Mr. Taute's
12 position and NYPD was to coordinate with brand owners and
13 provide them as complainants with this information from the
14 NYPD Peddler's Task Force arrest log. And that's the
15 information.

16 And the Peddler's Task Force arrest log would, of
17 course, be a public record under the hearsay exception. He
18 will also testify that the reason he didn't simply photocopy
19 the arrest log itself and sent it is because Swatch was only
20 entitled as a complainant to information about arrests based on
21 their brands and the arrest lists would have included other
22 brands and that's why Mr. Taute just extracted the information
23 to which Swatch was entitled and put in an email.

24 MR. DELLA FERA: Your Honor, first of all --

25 THE COURT: Sounds like I'll have to hear a lot more

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1 on this.

2 MR. DELLA FERA: We agree.

3 MR. SCHICK: Your Honor, just one other issue with
4 respect to Mr. Taute. I do not mean to retread old ground, so
5 I tread slowly and carefully.

6 I recognize and acknowledge that there was a motion *in*
7 *limine* with respect to Mr. Taute's nonprosecute agreement. And
8 the only point I wish to raise for the Court's consideration as
9 it relates to this jury is while we don't have the nonprosecute
10 agreement, the letter from his attorney states that under the
11 terms of the agreement, Mr. Taute is obligated to advise any
12 court before which he appears about the circumstances of the
13 nonprosecute agreement.

14 The only question we raise is in the context of a jury
15 trial where the jury is acting in its capacity, whether that
16 entitles the jury to hear just that one paragraph.

17 THE COURT: What does the nonprosecution agreement
18 say, before he does what?

19 MR. DELLA FERA: We don't know, your Honor. We don't
20 have the nonprosecute agreement. We have a letter from his
21 attorney that says that the terms of the nonprosecute agreement
22 require Mr. Taute to inform the Court of the underlying conduct
23 that caused the nonprosecution agreement to be executed.

24 THE COURT: What was the underlying conduct?

25 MR. DELLA FERA: That he accepted payment from a

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1 peddler of counterfeit goods in exchange for information about
2 raids of various places.

3 THE COURT: This is while he was on the NYPD or off
4 the NYPD?

5 MR. DELLA FERA: This is after he was on the NYPD,
6 while he worked as a private investigator. However, it was
7 very shortly after. I believe it was at some point in 2011.
8 And the evidence in this case is that he was conducting raids
9 of Canal Street in earlier 2011.

10 But the main point, as Mr. Schick noted, is that the
11 terms of the nonprosecute agreement appear to require Mr. Taute
12 to inform the Court of his underlying conduct. And we query
13 whether or not the jury in this context would also then need to
14 be informed because of that requirement.

15 MR. GUNTHER: Your Honor, this is the motion *in limine*
16 before we got involved in the case. Back at the September 5th,
17 2017 conference, your Honor, you ruled on that at page 5 of
18 that transcript. And your Honor granted the motion and made it
19 clear that this subsequent conduct, after he had left the New
20 York City Police Department, was not relevant and should not be
21 brought up.

22 Now, to the extent that there's something in his
23 nonprosecution agreement that would require him to inform the
24 Court, you know about it; you've been informed. But I think
25 your Honor made a considered decision and a correct decision

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1 that what a jury might do with that information, particularly
2 given that it's after the fact, after the time that he left the
3 police force, is inherently problematic. You made a flat
4 ruling on that, your Honor. We think it was right. It's the
5 law of the case. We think it should stay.

6 THE COURT: All right. I'll check my ruling.

7 MR. SCHICK: Judge, can I have ten more seconds on
8 that, your Honor?

9 THE COURT: Yes. Please.

10 MR. SCHICK: I started by acknowledging that ruling.
11 And we understand, consistent with that ruling, we are not
12 asking if we can then explore while he's on the stand a series
13 of questions with respect to that. What we are asking simply
14 is that whatever he is, under the terms of his agreement,
15 required to read to the Court, he both inform the Court and the
16 jury. Beyond that we don't think that we would ask additional
17 questions.

18 THE COURT: I'll go back and check my ruling.

19 MR. GUNTHER: Thank you, your Honor.

20 THE COURT: If there's nothing else, I'm going to
21 excuse myself. We'll resume when the jury gets here.

22 MR. GUNTHER: Thank you, your Honor.

23 MR. NOYES: Thank you, your Honor.

24 (Recess)

25 (Continued on next page)

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1 (A jury of eight was impaneled and sworn)

2 THE COURT: Ladies and gentlemen, I will take a few
3 moments now to give you some initial instructions about this
4 case and about your duties as jurors. At the end of the trial,
5 I will give you further instructions. I may also give
6 instruction during the trial. Unless I specifically tell you
7 otherwise, all such instructions -- both those I give you now
8 and those I give you later -- are equally binding on you, and
9 you have to follow them.

10 I want to give you a few instructions about your
11 duties as jurors. Your duty is to find from the evidence what
12 the facts are. You and you alone are the judges of those
13 facts, and then you apply the law, as I give it to you, to the
14 facts as you find them in order to reach your verdict. You
15 have to follow the law whether or not you agree with it.
16 Please remember that nothing I may say or do during the course
17 of the trial is intended to indicate or should be taken by you
18 to be indicating what your verdict should be. What your
19 verdict should be will be strictly up to you.

20 The evidence from which you are going to find the
21 facts will consist of the testimony of the witnesses from this
22 chair right here; documents and other materials that will be
23 received into evidence; and occasionally facts that the parties
24 agree to, which we call stipulations.

25 Now, certain things are not evidence and you should

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1 not consider them. I'm going to list them for you.

2 First of all, the statements, arguments and questions
3 are not evidence. Let me emphasize this again. It is not the
4 question the lawyer asks that is evidence. What is important
5 is the witness's answer to the question.

6 Second, the objections to questions are not evidence
7 either. Remember, as we go through this process, if someone
8 objects because they believe the evidence being offered is
9 improper under the rules of evidence, you should not be
10 influenced by the objection or by my ruling on it. If the
11 objection is sustained, you will hear me say "sustained"; then
12 you should ignore the question. If I overrule the objection,
13 then you should treat the answer just like any other answer.
14 And if I instruct you that some of the items of evidence are
15 being received for a limited purpose only, you must follow that
16 instruction, which is called a limiting instruction, as you
17 must follow all of my instructions.

18 You don't have to worry about this right now. There
19 may not be a limiting instruction in this case, but if there
20 is, I will explain it to you at the time and I will give you
21 instructions as clearly as I possibly can about what the
22 limitations are. In addition, I may tell you that I am
23 excluding testimony or ask you to disregard certain testimony.
24 When I do that, it means you have to follow my instructions as
25 if the testimony is not in evidence, and you may not consider

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1 it.

2 In addition, anything you may have seen or heard
3 outside this courtroom is not evidence and should be
4 disregarded by you. You are to decide this case solely on the
5 admissible evidence that is presented in this courtroom.

6 There are two kinds of evidence that I want to review
7 with you -- direct evidence and circumstantial evidence.

8 Direct evidence is the direct proof of a fact. An
9 example of that would be testimony of an eyewitness, somebody
10 who actually saw the event as it occurred. Circumstantial
11 evidence is proof of a fact or facts from which you may infer
12 or conclude that some other fact or facts exist. Obviously, I
13 am going to give you further instructions on this and more
14 details on these and other matters at the end of the case, but
15 just keep in mind that you must consider both kinds of
16 evidence -- direct and circumstantial.

17 A very important task for every jury is to determine
18 the credibility of witnesses, and it is going to be up to you
19 to decide which witnesses to believe, which witnesses not to
20 believe, and how much of any witness's testimony to accept or
21 reject. Again, in my instructions to you at the end of the
22 trial, I will give you some guidelines which I hope will be
23 helpful to you in determining the credibility of witnesses.

24 This is a civil case. The standard, also called the
25 burden of proof, by which you must weigh the evidence in this

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1 case is the preponderance of the evidence standard. To
2 establish a fact by a preponderance of the evidence means the
3 greater weight of the evidence supports that fact. It refers
4 to the quality of the persuasiveness of the evidence, not the
5 number of witnesses or documents. In determining whether a
6 claim has been proved by a preponderance of the evidence, you
7 may consider the relevant testimony of all witnesses,
8 regardless of who may have called them, and all the relevant
9 exhibits received in evidence, regardless of who may have
10 produced them.

11 In this case, the plaintiff has the burden of
12 establishing its claims by a preponderance of the evidence. If
13 you find that the evidence on a given issue is evenly divided
14 between the parties, then you must decide that issue against
15 the plaintiff, because it has the burden of proof. But if you
16 find that the scales tip, however slightly, in favor of the
17 plaintiff, the party with the burden of proof, then that
18 element will have been proven by a preponderance of the
19 evidence.

20 Those of you who have sat on juries in criminal cases
21 or even watched television shows like Law & Order will have
22 heard of proof beyond a reasonable doubt. That requirement
23 does not apply in a civil case such as this one, and therefore,
24 you should not consider it.

25 I also want to tell you a little about the issue in

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1 this case. This case involves a dispute relating to United
2 States trademarks. Before summarizing the positions of the
3 parties and the legal issues involved in the dispute, I will
4 define what a trademark is and tell you why the law gives it
5 protection.

6 The term "trademark" includes any words, symbols or
7 devices that a person or company uses to identify its products
8 and to distinguish them from those sold by others. The law
9 permits the use of a trademark to help consumers identify a
10 company's product and to protect the company's reputation for
11 quality from being harmed by the sale of similar, though
12 inferior, merchandise. You come in contact with trademarks
13 every day of your lives. They are the names and symbols that
14 bring to your mind a particular company, certain products or
15 other images, sometimes positive and sometimes negative. Think
16 of, for example, the companies Coca-Cola, Kodak, GE and
17 Kellogg's and the symbols you associate with their brands.

18 Once a company has established a trademark, the right
19 to use that word or symbol belongs to that company exclusively,
20 and it becomes its property. No other person can use the same
21 or similar words or symbols because the law recognizes that
22 people associate trademarks with particular companies or
23 products, and without trademark protection, the public could be
24 misled about the nature, source and quality of products or
25 services.

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1 The law entitles the owner of a trademark to exclude
2 others from using that trademark without its permission. The
3 unauthorized use of a trademark is referred to as trademark
4 infringement.

5 Counterfeiting, or the use of counterfeit marks, is a
6 type of trademark infringement. Counterfeit marks are marks
7 that are identical to or substantially indistinguishable from
8 the mark of the trademark owner.

9 To help you follow the evidence, I will now give you a
10 summary of the positions of the parties with respect to the
11 trademark claims.

12 This case involves a number of registered United
13 States trademarks, each owned by Omega. Omega's claim against
14 375 Canal is what the law calls contributory trademark
15 infringement. Omega does not allege that 375 Canal directly
16 sold or offered for sale watches containing counterfeit Omega
17 trademarks. Instead, Omega contends that watches containing
18 counterfeit Omega trademarks were sold or offered for sale from
19 property that the defendant is the landlord of, and that the
20 defendant, through its actions or inactions, contributed to or
21 facilitated those sales.

22 Omega also contends that it is entitled to receive
23 damages from 375 Canal for contributing to the infringement of
24 Omega's trademarks.

25 Your job at this trial is to determine two things:

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1 First, you must determine whether 375 Canal
2 contributed to the infringement of one or more of Omega's
3 trademarks;

4 Second, if you find that 375 Canal contributed to the
5 infringement of Omega's trademarks, you must determine the
6 amount of damages to be awarded to Omega.

7 Now, just a few words about your own conduct as
8 jurors.

9 First of all, do not discuss the case with anyone or
10 permit anyone to discuss it with you. That includes your
11 fellow jurors. You cannot deliberate on your verdict until
12 after you are charged by me, and that takes place at the end of
13 the case. Until then, you simply cannot talk about the case.
14 You can talk to each other about almost anything else you'd
15 like, but don't talk about this case.

16 That probably seems a little strange to you, but
17 here's the reason. Obviously the evidence can only be
18 presented one witness at a time and one exhibit at a time, and
19 we don't want you to start talking to each other and reaching
20 conclusions before having the opportunity to see and hear all
21 the evidence in this case and hear my instructions on the law.
22 That is why we direct you to begin your deliberations at the
23 end and, until that time, not to have any discussions about the
24 case.

25 You should think about the case like a painting, where

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1 you can't tell from one stroke or one color what the painting
2 will look like. You have to wait until it's finished to make
3 your judgment, and that's what we ask you to do.

4 If at any time during the course of this trial any
5 person attempts to talk to you or communicate about the case,
6 either inside or outside the courthouse -- and I hope this does
7 not happen -- you should immediately report such attempt to me.
8 Don't bring it to the attention of other jurors. Just send me
9 a note directly.

10 Also, the lawyers and other participants at counsel
11 table have been instructed not to have any communications with
12 you as jurors. That's the rule, so don't say hello or even
13 wave. That goes for you, the lawyers and the witnesses. In
14 this courthouse, you may see people in the elevator, so if you
15 run into one another, please don't acknowledge them or expect
16 them to acknowledge you. They are under instructions not to
17 have any communication with you, and they are going to observe
18 that rule.

19 Don't read or listen to anything touching upon this
20 case in any way. Don't try to do any research on your own or
21 any investigation about the case. Those of you who have
22 computers at home, please do not use them for research on this
23 case. You must deal solely with the facts that are presented
24 in this courtroom.

25 Now, if you wish, we'll give you notepads and pens so

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1 you can take notes while the evidence is being presented. This
2 is permitted because some people find that taking notes helps
3 them focus on the testimony being given. You should not,
4 however, try to summarize the testimony. We have excellent
5 court reporters here -- Carol is one of them -- who take down
6 everything that is said throughout the trial. Your job is to
7 listen to the testimony and assess the credibility of the
8 witnesses.

9 If you do take notes, do not let it distract you from
10 your task. Moreover, your notes are for your private use only,
11 as a way to help you recall the testimony when you begin your
12 deliberations. Your notes are not entitled to any greater
13 weight than the recollection of a juror who did not take notes.
14 Finally, you may not take your notes away from the court. You
15 must leave them in the jury room at the end of each day.

16 As I mentioned earlier, this case should take five
17 days. Let me tell you how important your service is and how
18 much we appreciate it.

19 The way that trial works is that all of us here have
20 to be here before any work can be done. That includes the
21 attorneys; the witnesses; the court reporters; me, the judge;
22 and you, the jurors. If one person is missing, everything
23 stops until that person shows up. This is what makes it a
24 little bit different from work. It is not a situation where
25 you can simply call in sick. There are, of course, of

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1 extraordinary circumstances, but in all other circumstances, we
2 need you to be here every day and on time. I understand that
3 this may impose a burden, but as I've said, this is an
4 important service and one that is greatly appreciated.

5 Now, I'm going to start my trial day at 9:00 in the
6 morning. Before that, we open the jury room at 8:30 and
7 provide you with a light breakfast. The trial will go until
8 2:30 each day, with a half-hour break for lunch. We'll provide
9 you with a snack during the lunch break.

10 Now, here's how we're going to proceed.

11 The plaintiffs will make an opening statement, which
12 is an outline of what it hopes to prove and to help you
13 understand the evidence as it comes in. Next, the defendant
14 may make an opening statement but does not have to. Please
15 remember as you're listening to the opening statements that
16 they're not evidence.

17 Plaintiffs will then start presenting witnesses, and
18 the defense may cross-examine those witnesses. Following the
19 plaintiffs' case, the defendant may, if it wishes, present
20 witnesses, but it does not have to do so. After all the
21 evidence is in, each side will have an opportunity to get up
22 and present their closing arguments to you. In these
23 arguments, they're going to summarize or interpret the evidence
24 for you, and then, of course, I'll instruct you on the law.

25 After all that is completed, you'll retire to the jury

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1 room to begin your deliberations on your verdict.

2 I want to introduce David Gonzalez, my courtroom
3 deputy. You are going to be working with Mr. Gonzalez. He
4 will help you in the jury room and take care of your needs.
5 He'll get you notepads if you want to take notes. If you have
6 any problems, see Mr. Gonzalez.

7 I'm assisted in this matter by my two law clerks.
8 Working on this case is Amy Torres, sitting right here, and
9 Annie O'Toole, who is sitting over there against the wall.

10 It's 12:30 now. What we're going to do is take a
11 half-hour break. Mr. Gonzalez will take you back to the jury
12 room. You can hang up your stuff, grab a coke and a snack.
13 We'll resume at 1:00 and have the opening statement by the
14 plaintiff and then we'll have an opening statement by
15 defendant. Then we'll have the first witness this afternoon.

16 Thank you very much.

17 (Jury not present)

18 THE COURT: You're going to be how long?

19 MR. GUNTHER: Your Honor, Mr. Noyes is going to
20 present the opening argument.

21 THE COURT: Mr. Noyes, how long are you going to be?

22 MR. NOYES: Approximately half an hour.

23 THE COURT: Mr. Schick.

24 MR. SCHICK: About 20 to 25 minutes, your Honor.

25 MR. GUNTHER: Your Honor, can I just raise one issue

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1 with respect to our first witness?

2 THE COURT: Yes.

3 Please be seated.

4 MR. GUNTHER: Yes, your Honor.

5 With respect to our first witness, Ms. Quinonez, she's
6 come in from Denver to testify. She's a teacher. We need to,
7 if it's at all possible, we told her we had hoped to get her on
8 and off the stand today.

9 THE COURT: Yes.

10 MR. GUNTHER: And your Honor, the direct examination
11 is probably about 30 to 45 minutes.

12 THE COURT: Yes.

13 MR. GUNTHER: So we'll be getting towards the 2:30
14 time frame.

15 THE COURT: Right.

16 MR. GUNTHER: Would your Honor be able to indulge us
17 to complete her testimony today?

18 THE COURT: I think I have appointments upstairs
19 starting at 2:30, quarter to three.

20 MR. GUNTHER: OK.

21 THE COURT: You can make a shorter opening statement.

22 MR. GUNTHER: We can do that, and we can maybe even
23 work on the length of her direct testimony. We'll work on
24 that.

25 THE COURT: If it's a matter of, say, two or three

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1 minutes, five minutes, I'm flexible, but not much beyond that.

2 MR. GUNTHER: Thank you, your Honor.

3 THE COURT: OK. I'll see you at 1:00.

4 (Luncheon recess)

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Opening - Mr. Noyes

1 AFTERNOON SESSION

2 1:00 p.m.

3 (Jury not present)

4 MR. GUNTHER: Your Honor, just a quick point of
5 protocol. Should we stand when the jury goes in and out?

6 THE COURT: That's my habit.

7 MR. GUNTHER: OK. Thank you, sir.

8 MR. DELLA FERA: Your Honor, I just wanted to provide
9 exhibit binders of defendants' exhibits to the Court and deputy
10 clerk.

11 THE COURT: OK. Thank you very much.

12 (Jury present)

13 THE COURT: Please be seated.

14 Mr. Shin, would you mind removing your cap.

15 JUROR: Oh, my apologies.

16 THE COURT: Mr. Noyes.

17 MR. NOYES: Yes. May I proceed, your Honor?

18 THE COURT: Yes, you may.

19 MR. NOYES: Thank you.

20 Your Honor, members of the jury, my name is Chris
21 Noyes, and together with my colleagues, Bob Gunther, Isley
22 Gostin and Joseph Elks, we represent the plaintiff in this
23 case, Omega S.A. I also want to introduce Clinton Lam, who is
24 at the end of the table. He will be helping us with our
25 audiovisual presentation, and also Carole Aubert. Ms. Aubert

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Opening - Mr. Noyes

1 is from The Swatch Group in Switzerland, the parent company of
2 Omega, and she will be here throughout the trial.

3 As you heard during jury selection, Omega is a watch
4 company, but it's not just any watch company. Omega has been
5 making high-quality Swiss watches since 1848. In the 170 years
6 since, Omega watches have done extraordinary things. When Buzz
7 Aldrin landed on the moon in 1969, he was wearing an Omega
8 watch. To this day, Omega is the only brand of watch worn by
9 NASA astronauts, but it's not just NASA that has made the Omega
10 brand so well-known. Omega has been a presence at the Olympics
11 for years. Omega is the Olympics official timekeeper. And
12 since 1995, James Bond has worn an Omega watch in every Bond
13 film.

14 Now, given Omega's more than 170 years as a Swiss
15 watchmaker and its prominent place in popular culture, Omega's
16 trademarks have come to symbolize and identify the brand. As
17 you heard the judge this morning, this case involves Omega's
18 trademarks, and you'll hear about four of them throughout the
19 course of this trial. They are shown here on the screen. The
20 Omega symbol, which is the last letter in the Greek alphabet,
21 has been a trademark representing the Omega brand since 1894.

22 The Omega trademarks shown here were registered in the
23 United States Patent and Trademark Office. That means that
24 Omega has the exclusive right to use them. They can be
25 enforced against others. They are Omega's property. Other

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Opening - Mr. Noyes

1 companies cannot use these trademarks without Omega's
2 permission. Unfortunately, people do use Omega's trademarks
3 without their permission, and people counterfeit Omega's
4 valuable trademarks. People make fake versions of Omega's
5 world-class watches, watches that cost thousands of dollars at
6 an authorized retailer, but counterfeit versions are sold for
7 less than a hundred dollars.

8 These are people trying to profit from Omega's success
9 and hard work, and they're trying to do that without Omega's
10 permission. That's wrong, and that's not fair. And that's
11 what this case is about. This case is about the unlawful
12 counterfeiting of Omega's trademarks.

13 Omega brought this case to protect its trademarks from
14 those, like the defendant, 375 Canal LLC, that profit from
15 Omega's trademarks by allowing or simply being willfully blind
16 to the sale of the counterfeits.

17 Now, the key events in this case took place a few
18 years ago, between 2004 and 2012, but this case is important.
19 Why is it important? It's important because counterfeiting is
20 wrong, and when a landlord, like the defendant, allows
21 counterfeit activity to happen on its property, looking the
22 other way and collecting rent, that's just as wrong as making
23 and selling the counterfeit goods themselves. And you will
24 hear during the trial that that is exactly what the defendant
25 did. The defendant looked the other way despite being told,

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Opening - Mr. Noyes

1 again and again and again, that counterfeit goods were being
2 sold on its property.

3 Now, counterfeiting is a problem. It's a problem for
4 Omega, so Omega hired investigators to look into the problem,
5 and ultimately, because the defendant failed to take reasonable
6 steps to address the issue of counterfeiting on its property at
7 375 Canal Street, in May 2012, investigators purchased a
8 counterfeit Omega watch. It had multiple counterfeit Omega
9 trademarks on it and it was from this shop, a souvenir gift
10 shop, located at 375 Canal Street. That watch was sold for \$80
11 cash. It didn't come with an instruction manual. It didn't
12 come with a warranty card. It wasn't sold in an Omega box. It
13 wasn't sold in a box at all. It was sold in a plastic Ziploc
14 bag. It was one of two counterfeit Omega watches the clerk
15 offered to sell Omega's investigators that day.

16 But this case is about more than the sale of a single
17 counterfeit watch, as serious as that is. The evidence will
18 show that the defendant has repeatedly looked the other way
19 while its tenants sold counterfeit goods at 375 Canal Street.
20 Time and time again, the defendant did little or nothing to
21 address the problem of counterfeiting on its property, and the
22 little that it did do didn't work. From at least 2004 through
23 2012, counterfeiting was a constant problem at 375 Canal
24 Street.

25 So who is the defendant?

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Opening - Mr. Noyes

1 As the judge told you, 375 Canal LLC is the owner and
2 landlord of the commercial building located at 375 Canal
3 Street, here in lower Manhattan. It's owned that building
4 since 2005, and it's owned by Albert Laboz, who you will hear
5 testify here today, during this trial, and his two brothers.
6 The Laboz brothers are principals in a company called United
7 American Land LLC, which owns the defendant. American United
8 Land LLC owns and manages a number of properties in the Canal
9 Street area.

10 MR. SCHICK: Your Honor, that's actually not accurate,
11 and we discussed it this morning.

12 THE COURT: Go ahead.

13 MR. NOYES: As you will learn, stores located at 375
14 Canal Street have been accused of selling counterfeit goods for
15 years, and this is not just an Omega watch issue.

16 Starting in at least 2004, other brands -- like Rolex,
17 Tiffany, Chanel -- gave notice that counterfeit goods were
18 being sold at 375 Canal Street. Brands gave notice that
19 counterfeit merchandise was sold at 375 Canal Street in 2004.
20 In 2007, Tiffany gave notice that a counterfeit ring was sold
21 at 375 Canal Street. In 2011, Chanel gave notice that a
22 counterfeit Chanel necklace was sold at 375 Canal Street. In
23 2006, Louis Vuitton sued the defendant. They sued the
24 defendant because 375 Canal Street had been selling counterfeit
25 goods with its Louis Vuitton trademarks. The defendant agreed

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Opening - Mr. Noyes

1 to be permanently enjoined and restrained from infringing Louis
2 Vuitton's trademarks. But it's not just private companies that
3 have attempted to stop the counterfeiting at 375 Canal Street.
4 The city of New York sued the defendant twice, once in 2006 and
5 once in 2009, because counterfeit merchandise was being sold at
6 375 Canal Street. The defendant settled those cases as well.

7 But the counterfeiting didn't stop at 375 Canal Street
8 after it was sued by Louis Vuitton in 2006, and it didn't stop
9 after the defendant was sued by the city of New York in 2009.
10 During this trial, you will hear evidence that the defendant
11 knowingly and willfully contributed to the infringement of
12 Omega's valuable trademarks. Here's what the evidence will
13 show, and I'm going to walk through it for you chronologically.

14 In 2005, the defendant takes ownership and control of
15 the property, 375 Canal Street. In 2006, both Louis Vuitton
16 and city of New York sue the defendant because counterfeit
17 goods are being sold at 375 Canal, and again, the defendant
18 settled those cases. In 2007, the defendant is notified that
19 Tiffany jewelry, counterfeit Tiffany jewelry was sold at 375
20 Canal. In mid-2009, the city of New York again sues the
21 defendant because counterfeit goods are being sold at 375 Canal
22 Street. The case is settled, again, and as part of that
23 settlement, the defendant agreed that any future tenants and/or
24 subtenants shall be permanently and perpetually enjoined from
25 selling, facilitating the sale or possessing trademarked

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Opening - Mr. Noyes

1 counterfeit merchandise and/or pirated merchandise. That was
2 August of 2009.

3 Just a month earlier, in July of 2009, the defendant
4 entered into a lease agreement with a company called T.A.
5 Discount Store. Now, in that lease, T.A. Discount was required
6 to use the premises at 375 Canal as a store selling perfume,
7 and the lease also said that the tenant shall not sell
8 trademark or counterfeit merchandise of any kind.

9 But T.A. Discount was involved in the sale of
10 counterfeit merchandise at 375 Canal Street. As you will hear,
11 it was involved in the sale of counterfeit Omega watches. In
12 December of 2010, the New York City Police Department peddler
13 task force conducted raids on Canal Street. As you will learn,
14 that task force is responsible for enforcing rules and
15 regulations against trademark counterfeiting in the city, and
16 on that day, the New York Police Department confiscated
17 counterfeit Omega watches at the souvenir shop at 375 Canal
18 Street, and they arrested someone at the store. Then two
19 months later, in February 2011, the NYPD conducted raids again
20 on Canal Street, including 375 Canal. They made another
21 arrest, and they confiscated several counterfeit Swatch
22 watches. During this trial, you'll hear from Richard Taute,
23 and he was a member of the New York Police Department peddler
24 task force at the time of these raids, and he'll tell you about
25 these arrests.

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Opening - Mr. Noyes

1 Now, a month later, in April 2011, the defendant is
2 notified again about counterfeit goods, this time Chanel
3 jewelry being sold at 375 Canal. And then on September 28,
4 2011, Omega sends the defendant a letter. In that letter,
5 Omega notifies the defendant that counterfeit Omega and Swatch
6 watches were being sold at 375 Canal Street. On October 3,
7 2011, defendant responds to Omega. Defendant's attorney,
8 Ms. Sharyn Tritto, who will testify during this trial, wrote
9 with respect to 375 Canal, apparently the tenant sublet the
10 space to an entity that was selling counterfeit goods bearing
11 her client's trademark. Now, the defendant's response here to
12 Omega said that the offending tenant had been removed, but the
13 evidence will show that the counterfeiting did not stop at 375
14 Canal Street. Just eight months after Omega told the defendant
15 that 375 Canal had been involved in the sale of counterfeit
16 Omega watches, and seven months after the defendants told Omega
17 that the offending tenant had been removed, counterfeit watches
18 appeared again at 375 Canal Street.

19 On May 19, 2012, a team of investigators visit the
20 storefronts along Canal Street. They had the goal of
21 purchasing watches with Omega trademarks, counterfeit Omega
22 trademarks. During the investigation, one of Omega's
23 investigators, Leslie Quinonez, purchased a counterfeit watch
24 at 375 Canal Street for \$80 cash.

25 You'll hear from Ms. Quinonez in this case. She'll be

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Opening - Mr. Noyes

1 our first witness. She's now a schoolteacher in Denver, but
2 she's come here to testify for you. She will tell you about
3 the investigation in May 2012, and she'll tell you about the
4 purchase of the counterfeit watch. And you'll see the video
5 that she took while she was conducting the investigation.

6 You will also hear from Brad Cole, another
7 investigator who witnessed the Omega watch purchased that day.
8 You will see his videos of the investigation, and you will see
9 the photo he took of the counterfeit watch purchased at 375
10 Canal that day, soon thereafter.

11 Here's that photo.

12 And you will see the counterfeit watch itself in this
13 case.

14 Here it is.

15 And here are some photos of that watch.

16 Now, this watch purports to be an Omega Seamaster
17 Broad Arrow watch. You will learn that Omega has never made a
18 Seamaster Broad Arrow watch. And you will learn that this
19 watch has multiple counterfeit trademarks on it, on the watch
20 face, on the watchband and on the watch back. And you will
21 learn this watch is an obvious fake. You will hear from Peter
22 Foster, who is the vice president of customer service at The
23 Swatch Group U.S. He's been working for Swatch for 15 years,
24 and he has nearly that many years' experience identifying
25 counterfeit watches. He'll explain why this \$80 watch

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Opening - Mr. Noyes

1 purchased at 375 Canal Street is a counterfeit. He will
2 compare it to the closest authentic Omega watch, which is an
3 Omega Seamaster Aqua Terra, which retailed for about \$5,000.

4 Finally, you will learn that T.A. Discount Store, the
5 company that was leasing 375 Canal Street, starting in 2009,
6 you will learn that they were more than a year after the
7 defendant told Omega the offending tenant had been removed from
8 375 Canal Street. You will learn that T.A. Discount was still
9 leasing the store when this lawsuit was filed on September 14,
10 2012. And you will learn that T.A. Discount didn't vacate 375
11 Canal Street until two months after the lawsuit was filed,
12 November 26, 2012.

13 Taken together, this evidence will show that the
14 defendant is liable for contributory trademark infringement.
15 As the Court told you, it is Omega's burden -- it is our
16 burden -- to prove that, and we will. The evidence will show
17 that the defendant owned and controlled 375 Canal Street; that
18 the defendant had been notified repeatedly that counterfeit
19 goods had been sold at 375 Canal Street; and that it knew that
20 counterfeit Omega watches specifically -- with Omega
21 trademarks -- had been sold there, and despite having notice of
22 the counterfeit goods, despite having notice that Omega
23 counterfeit watches with counterfeit Omega trademarks had been
24 sold there, the defendant continued to lease the property to
25 known trademark infringers. And the evidence will show that

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Opening - Mr. Noyes

1 the defendant failed to take reasonable steps to stop known
2 trademark infringers from using 375 Canal Street.

3 Now, soon you will hear from the defendant, and we
4 will have an opportunity to address you at the conclusion of
5 the evidence, during closing arguments, so I wanted to address
6 some of the things that you might hear during the course of the
7 trial from the defendant.

8 I suspect that the defendant will criticize our
9 investigations at 375 Canal Street. The defendant may even
10 suggest that the \$80 watch purchased on Canal Street, sold in a
11 plastic bag, without a box, without a warranty card, is an
12 authentic watch and not a counterfeit. In response to that, we
13 would ask you, members of the jury, to use your judgment and
14 common sense when evaluating the evidence as the trial
15 proceeds.

16 Now, the defendant may criticize our witnesses in this
17 case, and they may criticize the witnesses for some mistakes
18 that were made. And there were mistakes. This case involves
19 people, human beings. Human beings make mistakes. Mr. Cole,
20 one of our investigators that you will hear testify, made some
21 mistakes, and he will admit that. Four years after the
22 investigation in May of 2012 at 375 Canal Street, he submitted
23 a declaration in this case. That's a sworn statement to the
24 court. And in that declaration, he said that he, Mr. Cole, was
25 the person who purchased the counterfeit watch at 375 Canal

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Opening - Mr. Noyes

1 Street. That was an error. He didn't purchase the watch.
2 Now, he was there when the watch was purchased. He was running
3 the investigation, but the watch purchase was made by Leslie
4 Quinonez, who was working with Mr. Cole that day.

5 Ms. Quinonez will testify that she purchased the
6 counterfeit watch at 375 Canal Street. Mr. Cole will come here
7 and testify to the same thing. And errors in Mr. Cole's
8 declaration in 2016, four years after the investigation, were
9 truly inadvertent errors. Mr. Cole wrote a report of the May
10 19, 2012, investigation just days after it happened, and that
11 report was attached to the declaration he submitted to this
12 Court. That report correctly identifies Ms. Quinonez as the
13 person who bought the counterfeit Omega watch.

14 Mr. Cole's mistakes in 2016 do not change the evidence
15 we will present, the photographs, the videos and the testimony
16 that you will hear confirming that there was a counterfeit
17 Omega watch purchased at 375 Canal Street on May 19, 2012.

18 Now, the defendant may also suggest that this case
19 doesn't matter; that it's not a big deal; that it's just a case
20 about a single watch, and there's no counterfeiting problem
21 anymore at 375 Canal Street; and that 375 Canal Street is now a
22 wine store. And it's true. It's a wine store. It's a wine
23 store today, but it was a souvenir gift shop from at least July
24 2009 through November 2012. It wasn't a wine shop when the
25 NYPD raided Canal Street and confiscated Omega watches there in

J2pWome2

Opening - Mr. Noyes

1 2010, and it wasn't a wine store when Ms. Quinonez purchased a
2 counterfeit Omega watch there in 2012. And just because one
3 storefront is now selling wine doesn't mean the risk of
4 counterfeiting is over.

5 As you will hear from Albert Laboz himself, the person
6 who is an owner of 375 Canal Street, he and his brothers own
7 several properties with retail space along Canal Street. Some
8 of these retail spaces are vacant, available to rent, and as
9 you will hear, some of them are souvenir shops and that they
10 are collecting rent from those shops.

11 In the end, this case isn't about one store selling
12 counterfeit goods. It's not even about the sale of one
13 counterfeit Omega watch, even though those things are certainly
14 wrong by themselves. This case is about more than that. It's
15 about making sure that the defendants, the commercial landlord,
16 take the steps necessary to prevent counterfeit goods from
17 being sold on its property. It's about making sure that this
18 landlord focuses on the problem of counterfeiting and not just
19 collecting rent from its tenants. It's about getting them to
20 do the right thing, and not just one time but every time.

21 Members of the jury, let me conclude by thanking you
22 for your time, attention and patience. Jury duty does impose a
23 burden on all of you, but as I mentioned at the beginning, this
24 is an important case. Allowing unlawful conduct to occur on
25 your property, like the sale of counterfeit goods, is wrong.

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Opening - Mr. Noyes

1 Prioritizing profits over the property rights of others, the
2 trademark rights of others, is wrong, so at the conclusion of
3 the evidence we will ask you to bring your collective judgment
4 and your wisdom to bear and decide that, first, Omega's
5 trademarks have been infringed; second, that the defendant, 375
6 Canal Street LLC, contributed to the infringement of Omega's
7 trademarks; and finally, as the Court will explain to you at
8 the conclusion of the evidence, Omega is entitled to an award
9 of statutory damages because of the defendant's knowing and
10 willful contributory trademark infringement.

11 We look forward to presenting the evidence to you.
12 Thank you for listening.

13 (Continued on next page)

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J2PVOME3

Opening - Mr. Schick

1 THE COURT: Mr. Schick.

2 MR. SCHICK: Yes, your Honor.

3 Good morning. My name is Avi Schick, and I am the
4 lawyer for the defendant in this case, the single defendant in
5 this case, 375 Canal LLC, which, as we affirm, is the owner of
6 the building, the commercial building at 375 Canal Street.
7 Now, I'm going to be here with you this week for many reasons,
8 but it's very rare that I get to play the little guy, and this
9 week I do. So thank you.

10 As you'll see for yourselves throughout the week, this
11 is a very odd case. It's odd because it's a case about the
12 supposed sale of a single watch. It's odd because even though
13 this is a case about whether a counterfeit Omega watch was sold
14 and what the landlord had to do with that sale, Omega does not
15 claim that 375 Canal LLC, the landlord -- and I'm going to call
16 them the landlord because otherwise you're going to get
17 confused between 375 Canal LLC, the company, and 375 Canal
18 Street, the address. And that's going to be very confusing, a
19 full week we have two or 375 Canals. So I'm going to refer to
20 them as the landlord just because otherwise we're going to get
21 stuck I think.

22 Omega does not allege that 375 -- that the landlord
23 had anything to do with the decision, whoever made it, to
24 manufacture counterfeit Omega watches. Omega does not claim
25 that 375 Canal LLC, the landlord, had anything to do with the

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Opening - Mr. Schick

1 distribution of any counterfeit watches. And they do not
2 allege that the landlord had anything to do with the sale of
3 the watch. The sale of the watch, if there was a watch sold,
4 and if they have that watch, it was done by an employee of a
5 tenant or a subtenant. They don't allege that. They don't
6 allege that 375 Canal LLC had anything to do with that.

7 It's also odd because of what Mr. Noyes didn't say,
8 perhaps he was embarrassed. But what he didn't tell you is
9 that the numbers change, but at this moment Omega is seeking \$8
10 million from the landlord for the sale of that single watch.
11 That's what they say they are entitled to; that's what you're
12 here for this week, to determine whether Omega is entitled to
13 \$8 million, because on May 19th, 2012, they say an employee of
14 a subtenant of the tenant of the landlord sold a watch.

15 It's odd because while today Mr. Noyes said, Of course
16 the watch is counterfeit; it was sold there, previously their
17 claim was there's consumer confusion; who knows what people
18 think when they buy the watch.

19 And they took that watch that was bought on May 19,
20 2012, and, as they said, they are going to have witnesses come
21 in and tell you it was counterfeit; that we can sell the watch,
22 we don't have the watch.

23 But what's odd about this case is that they say that
24 watch was purchased on May 19th, 2012. And you will hear that
25 they didn't seek to evaluate that watch for counterfeiting

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Opening - Mr. Schick

1 until August 2017. They waited more than five years.

2 Now, what has happened with that watch? They are
3 going to come in and Mr. Noyes said he has a watch. But I
4 don't know what you expect when this company says that there's
5 watches that were sold and they are going to prove it to you.

6 But you will hear in this case that what Omega did,
7 that what this multibillion-dollar European corporation did
8 with this watch is as follows:

9 They took a Ziploc bag, they took a Post-It note, they
10 stuck it in, and they said, You see? Here is proof, seven
11 years later, that it's the same watch.

12 Now, we don't have to prove anything in this case;
13 they do. But ask yourselves, are there better ways other than
14 what -- professional ways? Are there tamperproof tags that can
15 be put on so that you, the jury, know for sure which watch it
16 is?

17 I got home late last night from preparation. And my
18 son, who was home for the week and went back to school, left me
19 something. And what he left me was this. And so I called him
20 and I said, Aaron, what's this?

21 And he said, Well, I was hearing about the case this
22 weekend, and I decided I could be an Omega investigator.
23 Because I have a watch, I have a Ziploc bag, and I have a
24 Post-It.

25 So here we are. That's all they have on this case.

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Opening - Mr. Schick

1 And so remember, the question for you this week is not
2 necessarily whether a watch sold on May 19th, 2012 was
3 counterfeit. That is a question, but that's, by far, not the
4 only question. The question is is the watch they are showing
5 you this week the same watch that was purchased on May 19th,
6 2012?

7 And what you'll hear is that on the same day
8 Ms. Quinonez purchased the watch at 375 Canal Street at that
9 store, she purchased five other watches that same day. Five
10 other what she says are counterfeit Omega watches. We haven't
11 seen those watches; we don't know where they are. But none of
12 them were tagged; they were all put in Ziploc bags. And years
13 later they are saying, Trust us. There's a Post-It note,
14 there's a Ziploc bag. It's the same watch.

15 They tried to get ahead of the Brad Cole issue.
16 They'll bring in Brad Cole to try to convince you it's the same
17 watch. They said he made some mistakes in his declaration.
18 Now, we'll get into that tomorrow probably with Mr. Cole, but
19 understand he submitted a sworn declaration. It said twice
20 that it's under penalty of perjury to this Court.

21 He asked the Court to make a legal ruling based on the
22 declaration. And it started saying, I'm giving this under
23 penalty of perjury, and it concluded saying it's under penalty
24 of perjury. And it had 20 short paragraphs. And he has
25 admitted to this Court that 11 of those paragraphs were false.

J2PVOME3

Opening - Mr. Schick

1 Not a mistake. Not brain freeze. Eleven out of 20 paragraphs
2 were false. But he's the best they have to convince you that
3 you're looking at the same Ziploc baggie and the same Post-It
4 note.

5 So ask yourself all throughout this week, why didn't
6 Omega take the common sense steps that are necessary to
7 preserve evidence? It's not that complicated; it's not that
8 expensive. But there's something more fundamental to keep in
9 mind, and I ask you to keep it in mind throughout the case.

10 As I said, Omega is not claiming that 375 Canal
11 manufactured the counterfeit merchandise; Omega does not claim
12 that 375 Canal distributed the merchandise; and Omega does not
13 claim that 375 Canal sold any of the counterfeit merchandise.
14 Not only that, just to be clear, Omega is going to claim that
15 anybody who worked for the landlord distributed or sold
16 counterfeit merchandise. No one at any time ever.

17 Now, Omega truly thinks that someone was
18 counterfeiting merchandise; and, of course, in this case they
19 have to prove that someone was counterfeiting merchandise. And
20 they have to prove that someone distributed it, and they have
21 to prove that someone sold it. Not only that, despite all
22 their talk, it's a very professional, well-done, fancy,
23 expensive presentation they made. But it's also distracting,
24 because it had very little about Omega, it talked about a lot
25 of other things. They talked about Swatch and the Swatch

J2PVOME3

Opening - Mr. Schick

1 Watch.

2 Well, as the judge said, lawyers don't provide
3 evidence. There are no claims about a Swatch Watch in this
4 case. Period. Full stop. They are suggesting they had
5 evidence; they are suggesting something was wrong. You have
6 all these lawyers; you have someone here from Switzerland.
7 There is not a single claim in this case about a Swatch Watch.
8 They are just trying to distract you, distract you from the
9 fact that what Omega has to prove is that there was
10 counterfeiting of an Omega watch; there was a distribution of
11 an Omega watch; that there was a sale of a counterfeit Omega
12 watch at the premises at 375 Canal Street.

13 Now, what's strange is that you see here there are
14 three empty chairs. And those chairs are empty because Omega
15 has chosen not to call to this trial anybody who is involved in
16 that counterfeiting. They don't want you to hear --

17 MR. NOYES: Your Honor --

18 MR. SCHICK: I'm just saying they made this choice not
19 to call as a witness anybody in this trial --

20 THE COURT: It's fair comment. It's argument.

21 Your objection is overruled.

22 MR. SCHICK: They chose not to call anybody who
23 manufactured the watch, they didn't call anybody who
24 distributed the watch, and they are not calling anybody who
25 sold the watch. They tell you they know who sold it; we'll

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Opening - Mr. Schick

1 talk later about what efforts they made. I'll show you an
2 email soon. They know who the sole distributor was in New
3 York, they say, and they did nothing.

4 But Omega doesn't want any of these people here at
5 this trial. They are entitled to do that, but you have to
6 wonder, what are they worried about? Why not have the people
7 who they say were actually involved in the counterfeiting here
8 at this trial?

9 I'll tell you why.

10 Because they want you to think only about the landlord
11 375 Canal. They do not want you to think about all the other
12 people who actually sold, manufactured, distributed the watch.

13 And I wrote this before I got here, but it turned out
14 to be true, they want you to just assume that the trademarks
15 were counterfeited without thinking too hard about it or asking
16 too many tough questions. They want to slide over all of the
17 necessary facts. Was there a counterfeit watch? Is it the
18 same watch? Who manufactured it? Who sold it? Who
19 distributed it? They want you to skip over all of that and
20 think about the landlord, the only one they've asked to be
21 here.

22 Well, that doesn't seem right and it doesn't seem
23 fair, not to my client the landlord, not to the jury, not to
24 the truth. In a case that is a claim about counterfeiting that
25 requires proof of counterfeit Omega merchandise that was sold,

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Opening - Mr. Schick

1 and in a case in which there's no dispute Omega had the burden
2 of proof to establish all the facts, a case in which Omega has
3 to establish a sale of counterfeit Omega merchandise, it
4 doesn't make sense not to have them prove their case.

5 Now, there are lots of lawyers and legal personnel in
6 this courtroom, but there are only two people here who are
7 lawyers who don't work for Omega, that's myself and my
8 colleague Steve Della Fera, who you'll be seeing and hearing
9 from this week.

10 So we will ask questions this week about the claims of
11 counterfeiting. We will ask those questions even though 375
12 Canal, the landlord, was not involved with the counterfeiting.
13 Omega doesn't claim that we manufactured, distributed, or sold
14 the merchandise. Omega doesn't claim anybody who worked for
15 the company manufactured, distributed, sold the merchandise.

16 So why are we asking those questions? We are asking
17 those questions because you deserve to be able to make a
18 decision based on facts.

19 But please keep something in mind. Just because we
20 are asking questions, that does not mean that we think
21 counterfeiting is okay. It's not okay. We don't think it's
22 okay. Our client doesn't think it's okay. That's why our
23 client was never involved with the counterfeiting. But I have
24 to ask the questions because there's no one else here.

25 Also, please remember that the landlord does not have

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Opening - Mr. Schick

1 to prove anything at this trial. The burden of proof in this
2 trial is entirely and exclusively on Omega.

3 A couple other things to keep in mind.

4 In this case Omega is seeking, as I said, \$8 million
5 in damages for the sale of a single watch, the watch in a
6 Ziploc bag with a Post-It note that they now say was sold at
7 375 Canal on May 19, 2012. You'll hear lots of evidence about
8 how that watch traveled, who it traveled with, how it was kept.

9 It's important to remember, just like Omega is trying
10 to confuse things by not having those who they claim were
11 actually involved with the counterfeiting here at trial, Omega
12 may try to confuse you by talking a lot about merchandise that
13 is not Omega merchandise, as they did this morning.

14 But please keep in mind Omega has no claims about any
15 other trademark. Not any other trademark that you heard about
16 this morning other than Omega do they have a claim for. Omega
17 doesn't own those trademarks. Omega is not entitled to any
18 damages for the sale of any nonOmega merchandise. Omega can
19 talk a lot about those trademarks, but all that talk does not
20 legally entitle it to five cents, not a nickel. It's just a
21 distraction.

22 Omega's only claim for damages is about the single
23 watch they say was sold on May 19th, 2012. And as the judge
24 will tell you, for 375 Canal to be liable, they would have to
25 have had knowledge of sales of counterfeit Omega merchandise.

J2PVOME3

Opening - Mr. Schick

1 Now, I said before that Omega knows who distributed
2 and sold the watch at issue in this case. How do I know that?
3 They are not here. How do I know that Omega knows who the
4 distribute was? Well, let me show you. I want to show you an
5 email from Brad Cole, the investigator they talked about. It's
6 an email to a lawyer, a Mr. Lindenbaum, whose firm used to
7 represent Omega in this case. And the exhibit is NN and we'll
8 pull it up on your screens in a minute, I hope.

9 (Pause)

10 THE COURT: You'd better go ahead.

11 MR. SCHICK: Anyway, in this email, which you'll see,
12 it's dated February 21st, 2012. And in the email Mr. Cole
13 writes to Mr. Lindenbaum. I'm sorry you don't have it on the
14 screen; you'll see it throughout the trial. Our apologies.

15 It says: Dear Jeff, my report on our Canal Street
16 visit is attached. In reviewing what we observed, I believe
17 the following is happening.

18 Here's what he says. This is a quote: A common
19 distributor is supplying the bulk of Canal Street. I believe
20 this because -- and he gives several reasons. And then he
21 says: The above would also mean -- "the above," meaning
22 there's a common distributor that is supplying all of Canal
23 Street with counterfeit Omega goods. The above would mean a
24 centralized distribution point. This means inventory, possibly
25 sizable.

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Opening - Mr. Schick

1 So they had their investigator tell them that he knows
2 where all the inventory, supplying all the distributors,
3 supplying all the shopkeepers with counterfeit goods was
4 located.

5 Now, ask yourself, what do you think they did with
6 that? I'll tell you. Nothing. That's right, Omega and its
7 lawyers did absolutely nothing with that information. They did
8 not follow up, they did not make a claim, they did not tell the
9 city, they did not tell the police, they did not file a
10 lawsuit. They did nothing to prevent the flow of all that
11 counterfeit Omega product into the streets of New York.

12 Let me give you another oddity.

13 Omega claims, as you heard this morning, that there
14 was a counterfeit Omega watch sold at 375 Canal Street in
15 December 2010. To be precise, they say on December 7, 2010.
16 You'll hear the evidence about that and you'll decide whether
17 they really have evidence. They certainly have no watch. The
18 witness they mentioned, they mention a witness that is going to
19 come tomorrow, he will tell you he has no recollection whether
20 he was even there that day, but okay.

21 But Omega claims they knew it at the time. Omega says
22 they know. We had a lawyer, Mr. Paul; and he was aware on
23 December 7th that it was sold.

24 Now, what did Omega do with that information?

25 Again, nothing, at least not for a very long time.

J2PVOME3

Opening - Mr. Schick

1 Well, they are here today saying how horrible it was. So a
2 timeline stretching back till 15 or more years ago, when Omega
3 and their lawyer at the time, Mr. Paul, had the information
4 that they say that an Omega counterfeit watch was sold on
5 December 7th, 2010, they did nothing.

6 Now, almost a year later what they did was they wrote
7 a letter. Mr. Noyes showed you a letter. They waited
8 December, January, February, March, April, May, June, July,
9 August, September 28th. They waited almost an entire year, ten
10 months, to send the letter to the landlord saying there was a
11 watch found there.

12 I would show you the letter, but there are some
13 technical difficulties and we don't want to waste time. You
14 saw part of the letter, snippets; they only showed you part of
15 the letter. There was a lot misleading with what they snipped
16 in and snipped out and the testimony that they said, but we'll
17 take care of that with witnesses.

18 But they didn't show you anything about the second
19 page of the letter. The first page of the letter was what they
20 called a notice. The second page of the letter was a demand.
21 They said, Okay, there's this watch there. Do something about
22 it. But they actually said, We'll tell you what we want you to
23 do. And you'll see it this week in full. And it says: We
24 demand you immediately remedy the situation by taking the
25 following action. And the action was to remove the tenant or

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Opening - Mr. Schick

1 subtenant, which they did. Mr. Noyes was very clever before.
2 He said the same tenant was there. That's because it was a
3 subtenant.

4 What's a subtenant and a tenant, just to make sure we
5 know? A landlord owns a building. It doesn't operate the
6 building, it doesn't have offices there. It rents the space to
7 a tenant. Sometimes a tenant, in turn, rents some of that
8 space to a subtenant. That's what happened at 375 Canal
9 Street.

10 And so when they got this letter, the subtenant was
11 removed, as requested. And you'll see there was communication
12 about it, and Omega was fine. Omega didn't say give me \$8
13 million. Omega didn't say do anything more. Omega said
14 nothing.

15 So you're asking yourself, Why are we here this week?
16 If Omega itself didn't follow up with the distributor, if Omega
17 waited almost a year to follow up with 375 Canal in 2010/2011,
18 why is Omega making a federal case about this, literally a
19 federal case? Why are they doing that if the evidence is so
20 flimsy?

21 Well, we'll tell you the answer to that. The answer
22 is this whole case was a setup by a lawyer in search of a
23 payday. We know that, again, because we have an email. And
24 again, we're having some technical difficulties and it's
25 unfortunate, but it's not going to change the evidence in this

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Opening - Mr. Schick

1 case and it's not going to change the testimony.

2 And the email I'm talking about is, again, an email
3 from Brad Cole, who you're going to hear from tomorrow. It's
4 an email dated October 18, 2010, before anything happened here,
5 before, they say, even the December 2010 sale.

6 And Mr. Paul writes a letter, an email, to Mr. Cole.
7 And he says: We would like to follow up with a proposal to
8 bring to his clients.

9 Mr. Paul, the lawyer, wanted to go to Omega to
10 convince Omega to file civil lawsuits against brick-and-mortar
11 retail establishments, in other words, landlords.

12 The lawyer, before December 7, 2010, sent an email to
13 the investigator saying, You know what I want to do here,
14 investigator? I'm not looking to find out who distributes this
15 stuff. I'm not looking to find out who sells this stuff. I
16 want to set up a lawsuit. I want to convince my client Omega
17 in Switzerland to authorize me to file a lawsuit against a
18 landlord. That's what the evidence will show.

19 So this is not a case in which Omega has ever tried to
20 eradicate counterfeiting. This is not a case in which Omega
21 felt it was damaged and sought compensation; instead this is a
22 case in which Mr. Paul -- now when I say lawyers, prior
23 lawyers, I want to be very clear. Mr. Paul and his colleagues
24 used to represent Omega. Anything I say has nothing to do with
25 the fine men and women of the current law firm for Omega. I

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Opening - Mr. Schick

1 don't want to impugn them in any way or suggest that.

2 But this is not a case in which Omega felt it was
3 damaged and sought compensation; it's a case in which Mr. Paul
4 saw a payday, it's a case in which Mr. Paul saw a windfall.
5 And so instead of notifying 375 Canal, instead of going to the
6 landlord or the distributor to get rid of counterfeiting,
7 Mr. Paul set out to set the landlord up.

8 So what did he do? And what's one of the main things
9 you didn't hear this morning from Omega?

10 Well, Mr. Paul decided, after that email with
11 Mr. Cole, he's going to send investigators to 375 Canal Street
12 to get them to purchase counterfeit Omega merchandise.

13 What did he do? He sent them repeatedly.

14 He sent an investigator from whom you'll hear from
15 this week in December 2010 to find merchandise. The fellow
16 wrote back, there was no Omega for sale there.

17 He sent investigators early December 2011, whose sole
18 job was to locate, identify, see if you can purchase Omega
19 merchandise at the store at 375 Canal Street. And the guy
20 wrote back, There is none.

21 He sent the guy again on December 30th, 2011, two
22 weeks later. They weren't happy with these answers. Sent him
23 back again to try to purchase counterfeit Omega merchandise.
24 And again the fellow wrote back and said, There is none.

25 Mr. Paul was not to be stopped.

J2PVOME3

Opening - Mr. Schick

1 In February 2012, he sent investigators again to
2 identify, locate, and purchase counterfeit Omega merchandise at
3 375 Canal Street. And again the investigators said there are
4 none. Over a period of about 15 months, from December 2010
5 through 2011, through early 2012, Omega and its attorney hired
6 multiple different investigators to go to 375 Canal Street
7 undercover and to identify counterfeit Omega merchandise. And
8 each and every time they reported back that there was no Omega
9 merchandise for sale in the store.

10 Now, you might think that would be cause for
11 celebration at Omega. No counterfeit sales should be good
12 news. But this wasn't about counterfeit merchandise and,
13 frankly, we don't even know if the lawyers reported back to
14 Omega that there was no counterfeit merchandise for sale.
15 That's because this is not a case about counterfeit; it's a
16 case about a big payday and windfall.

17 So what did they do? Here's what they did:

18 On May 19, 2012, they sent a team of five people to
19 375 Canal Street in search of counterfeit Omega merchandise.
20 You've heard about them. This was their fifth attempt to
21 identify and try to find counterfeit Omega merchandise at 375
22 Canal in 15 months. And as you heard from Mr. Noyes, they say
23 that on that day, on their fifth attempt, they finally found a
24 counterfeit Omega watch there.

25 Well, what did they do?

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Opening - Mr. Schick

1 The Omega Paul gotcha machine went into high gear and
2 they filed this federal lawsuit. They didn't send a letter,
3 they didn't ask for anything else. They went directly to file
4 a lawsuit, asking for millions and millions and millions and
5 millions of dollars.

6 Now, Mr. Noyes talked about a video he's going to set
7 up. Now, I want to ask you some common sense questions.

8 They're going to show you a video of the May 19th buy.
9 And I don't know what watch they are showing you, but I'm
10 certainly not in a position -- I wasn't there, I'm not in a
11 position to say no watch was sold that day. It's not my burden
12 of proof. But they are going to show you a big video because
13 it's fancy and impressive.

14 But ask yourselves, where's the video of the failed
15 buys? How come on the first four times when they went -- and
16 we have documents that they sent saying that there's no Omega
17 merchandise -- there's no video? And all of a sudden, on the
18 fifth buy, they are there with a whole team of videographers.

19 So ask yourself and wonder, did Omega create the very
20 demand that it's now suing over? Were Omega and Mr. Paul
21 responsible for creating the demand for a watch that they are
22 now suing about?

23 You know the sign you often see in stores, You don't
24 see it, ask for it? Well, Omega asked for it; Omega asked for
25 it not once in December 2010, not twice in 2011, not a fourth

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Opening - Mr. Schick

1 time in early 2012, but on a fifth time, and it was finally
2 there. But whose fault is that? It's not the landlord's
3 fault.

4 Now, I said what did Omega do? Omega was just so
5 concerned about its counterfeiting of its trademarks. And
6 again, it's a serious matter; we don't condone it; we're not
7 involved with it. I shouldn't be the one having to get up here
8 and talk about it, except they didn't invite all the other
9 people here, strategically.

10 You got to say there's two Avis here. My wife will
11 say that's a problem I have; I got to reduce a little bit. But
12 there's two Avis here. And so I can ask questions about it,
13 even though it's not part of our case, just because they should
14 be put to the burden of proof.

15 So what did Omega do after May 19th? Did they go to
16 the City of New York and ask them to go after counterfeiters?
17 No.

18 MR. NOYES: Your Honor --

19 MR. SCHICK: Did they write a letter to 375 Canal?

20 MR. NOYES: Object, your Honor. This is speculation.

21 THE COURT: Overruled.

22 MR. SCHICK: Did they write a letter to 375 Canal, as
23 they had a year earlier, asked them to take action to remove
24 the seller from the premises? No. Did they even try to find
25 out the name of the individuals who they say sold the watch?

J2PVOME3

Opening - Mr. Schick

1 You'll hear no. They filed this lawsuit seeking \$8 million, a
2 big payday and a windfall.

3 Now, the events relevant to this lawsuit happened a
4 long time ago. The events happened in 2010, 2011, and '12. I
5 don't know about you, but how much do people remember about
6 what happened in a few moments, over the course of a few
7 moments. You walk in, you buy something, you see something
8 once, eight, nine, ten years ago. Not easy to remember details
9 from that long ago.

10 Luckily we have reports from back then that will show
11 you what happened. We have reports that establish that there
12 was no counterfeit Omega merchandise at 375 Canal in December
13 2010, all through 2011, and in February 2012.

14 But there are witnesses you will hear from and will
15 testify to one very important thing: Mr. Noyes mentioned
16 Mr. Foster. He's their star witness. He's going to say, You
17 see? It's counterfeit.

18 What Mr. Noyes didn't mention was that Mr. Foster
19 destroyed his notes about this case right before he was
20 supposed to answer questions under oath about it in August
21 2017. That's right. The only witness they say who is going to
22 swear that the watch they show you is the same watch that was
23 purchased in 2012, their expert, he had contemporaneous notes
24 and he destroyed them.

25 Now, ask yourselves a few questions. I said

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Opening - Mr. Schick

1 earlier -- and I'm trying to wind down. I said earlier that
2 Omega waited five years to get the watch evaluated. The watch,
3 they say, was sold on May 19th, 2012. They will tell you,
4 Mr. Foster will say he didn't see the watch until August 2017,
5 more than five years.

6 Well, one question is why they sued first and
7 evaluated later. But the more important question when we think
8 about Mr. Foster is what was he supposed to do when his bosses
9 came to him at Omega and said, Look at this watch. This was
10 the watch. That's the only evidence in an \$8 million lawsuit
11 that they filed five years before. They didn't ask him to
12 determine whether it was counterfeit, they asked him to testify
13 that it was counterfeit.

14 Now, ask yourself again why did Mr. Foster destroy his
15 notes about the watch in August 2017, right before he was going
16 to have to answer questions about it? And who was Mr. Foster
17 with that morning when he destroyed the notes? Mr. Paul, the
18 lawyer for Colin at the time -- I'm sorry, the lawyer for Omega
19 at the time, the architect of the setup and the shakedown. So
20 we'll never know what was in those notes. We'll never know
21 what Mr. Foster was actually told about the watch in 2017.
22 We'll never know what Omega told Mr. Foster he was supposed to
23 do or say with the watch because he destroyed his notes, notes
24 that he destroyed while standing with Mr. Paul.

25 Now, I already mentioned that Omega is seeking \$8

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Opening - Mr. Schick

1 million for the sale of that watch, a watch we didn't
2 distribute, a watch we didn't manufacture, and a watch we
3 didn't sell. And they'll tell you, well, we should have known
4 what was happening; we should have known that there was going
5 to be counterfeiting activity there. But think about it, Omega
6 sent teams of trained professional undercover investigators to
7 375 Canal Street on four different occasions in the 15 months
8 prior to May 19, 2012. Each of those times the investigator
9 reported back that there was no counterfeit Omega merchandise
10 for sale at the store. The investigator said there was no
11 counterfeit Omega merchandise. What was the landlord to do?

12 THE COURT: Mr. Schick, are you getting close to the
13 end?

14 MR. SCHICK: Yes, I am, your Honor. I actually was
15 just skipping over some things that I had covered before.

16 Now, I mentioned that Omega skipped over
17 manufacturing, distributor, seller, tenant, subtenant. They
18 want straight to the landlord. And they did that for probably
19 two reasons: Maybe they think they get a big payday, and also
20 landlords are not that popular.

21 But that's one final thing that's very odd about this
22 case. You see, landlords usually aren't popular because they
23 change neighborhoods. They bring in outsiders, they drive out
24 locals, they bring in immigrants. In this case the landlord,
25 375 Canal LLC, is being accused of being too nice a landlord,

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Opening - Mr. Schick

1 too accommodating of locals, too welcoming of immigrants. I
2 guess 375 Canal LLC can plead guilty to giving the local
3 shopkeeper a shot instead of bringing in one more Starbucks to
4 the neighborhood. But that's not to be punished.

5 Landlords also get accused of taking improper steps to
6 drive out tenants, of implying all types of underhanded tricks
7 to get immigrants and others out of their spaces. But in this
8 case, 375 Canal is accused of being too slow of its tenants, of
9 giving immigrants and local merchants a chance.

10 Now, I'm very proud to represent 375 Canal LLC, the
11 landlord. As we said, it's a building that's owned by three
12 brothers. It was originally owned by their dad. One of the
13 three brothers, Jason Laboz, who's sitting at the end of the
14 table -- Mr. Laboz, you can rise. One of the brothers is here
15 today. And as you heard from Mr. Noyes, another brother,
16 Albert Laboz, you'll meet later this week.

17 But keep in mind, this is not a case with anyone named
18 Laboz. There is no party to this case named Laboz. Omega,
19 with its big team of lawyers, did not sue anybody named Laboz.
20 Omega sued 375 Canal LLC and only 375 Canal LLC.

21 And so as we get to the evidence, as we get to the
22 witnesses and we get to the documents, remember, Omega is going
23 to try to confuse you about what this case is about and who
24 it's about. They'll confuse you by talking about entities that
25 are not 375 Canal LLC; they'll confuse you by talking about

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1 brands that are not Omega merchandise. But Omega is only
2 entitled to seek damages for the sale of a single watch it
3 claims was sold on May 19th, 2012.

4 In conclusion, as I said, keep in mind that we are the
5 only one here; that 375 Canal LLC, the landlord, is not accused
6 of selling any counterfeit Omega merchandise, not in 2012, not
7 ever.

8 Remember, we don't have the burden of proof. It's not
9 our job to prove that. It's hard to prove the negative. It's
10 hard to prove we never did. It's their job to prove something
11 happened and that we are responsible for it. Omega must prove
12 each and every element of its claim. We don't have to prove
13 anything.

14 So I ask you, I ask you this week to please listen
15 very closely to the witness, listen to everything that is said.
16 And more importantly, perhaps, listen closely to everything
17 that is not said. Like that famous Sherlock Holmes story with
18 the dog that didn't bark, sometimes the things that you don't
19 hear are the most important of all.

20 So please pay attention to what Omega says, and please
21 pay even closer attention to what Omega does not say. What you
22 don't hear will be most important.

23 Now, we don't have an army of lawyers on our side;
24 it's just me and Steve. But what we do have is an army of
25 facts that are on our side. What we do have is an army of

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1 evidence that is on our side. And what we do have is common
2 sense on our side.

3 And I'm confident that after you hear all the evidence
4 and after you listen to all the witnesses, we will have you,
5 the jury, on our side as well.

6 Thank you so much for listening this afternoon. And I
7 look forward to spending the next few days together with you.

8 THE COURT: Thank you, Mr. Schick.

9 Call your first witness.

10 MR. NOYES: Yes, your Honor.

11 Before we call our first witness, we do have some
12 exhibits we would offer. They are not objected to.

13 THE COURT: Okay.

14 MR. NOYES: Your Honor, we would offer Plaintiffs'
15 Exhibit 3, 4, 5 and 6. Those are Omega's trademark
16 registrations.

17 THE COURT: All right.

18 MR. NOYES: We would offer Plaintiffs' Exhibit 87, 90,
19 137, 140, 147, 206, 227, 252, 253, 254, and 255.

20 THE COURT: Any objection, Mr. Schick?

21 MR. SCHICK: Mr. Della Fera is going to handle
22 Mr. Quinonez.

23 THE COURT: Okay. Mr. Della Fera.

24 MR. DELLA FERA: No objection, your Honor.

25 I would just ask if counsel wouldn't mind repeating

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1 them. I lost track.

2 THE COURT: 3, 4, 5, 6, 87, 90, 137, 140, 147, 206,
3 227, 252, and 3, 254 and 255.

4 MR. DELLA FERA: No objection, your Honor.

5 THE COURT: They are received in evidence.

6 (Plaintiffs' Exhibits 3, 4, 5, 6, 87, 90, 137, 140,
7 147, 206, 227, 252, 253, 254, 255 received in evidence)

8 MR. NOYES: Thank you, your Honor.

9 The plaintiffs call Ms. Leslie Quinonez.

10 THE COURT: Is somebody going to get Ms. Quinonez?

11 MR. NOYES: I think Mr. Gunther is getting
12 Ms. Quinonez.

13 LESLIE QUINONEZ,

14 called as a witness by the Plaintiffs,

15 having been duly sworn, testified as follows:

16 MR. NOYES: May I proceed, your Honor?

17 THE COURT: All right, Mr. Noyes. Go ahead.

18 DIRECT EXAMINATION

19 BY MR. NOYES:

20 Q. Good afternoon, Ms. Quinonez.

21 A. Good afternoon.

22 Q. Can you please introduce yourself to the jury.

23 A. My name is Leslie Quinonez.

24 Q. Where do you live?

25 A. I currently live in Denver, Colorado.

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1 Q. How long have you lived in Denver, Colorado?

2 A. It will be -- it's been about four years.

3 Q. Before Denver, Colorado, where did you live?

4 A. I lived in New York City, in Queens.

5 Q. Where are you from originally?

6 A. I was born and raised in Queens, New York.

7 Q. What part of Queens?

8 A. Woodhaven.

9 Q. What do you do for a living, Ms. Quinonez?

10 A. I'm teacher.

11 Q. What type of teacher?

12 A. So I'm currently an English language development teacher.

13 So kids can come from other countries and are learning English
14 in middle school, so sixth, seventh, and eighth graders all in
15 one room. I teach them English.

16 Q. How long have you been an English language development
17 teacher?

18 A. Two years now.

19 Q. How long have you been teaching?

20 A. It's been about four years. Before this I taught in fifth
21 and sixth grade, and I taught math, science, and social
22 studies.

23 Q. Now, before you started living in Colorado, what did you do
24 for a living?

25 A. Before I started living in Colorado, I was actually a

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L. Quinonez - direct

1 student here in New York. And then I worked a little bit with
2 my father.

3 Q. Okay. We'll come to that in a moment.

4 But first, where did you attend college?

5 A. I went to John Jay Community College, and then I
6 transferred to Queens College, and that's where I decided to
7 become a teacher.

8 Q. What were you studying at John Jay?

9 A. Criminal justice.

10 Q. Did you obtain a degree?

11 A. No, I did not.

12 Q. From Queens College?

13 A. From Queens College, yes, I did.

14 Q. What is your degree in?

15 A. Elementary education.

16 Q. And other than your degree from Queens College, do you have
17 any other education or schooling that you have done?

18 A. Yeah. Right now I'm actually working towards my masters in
19 culturally and linguistically diverse education.

20 Q. When do you anticipate to obtain your masters?

21 A. May 18th.

22 Q. Of this year?

23 A. Of this year.

24 Q. Now, you mentioned working with your father. What type of
25 work did you do with your father?

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L. Quinonez - direct

1 A. So my father works for the New York state government, and
2 he also has a private investigating company. So I worked with
3 him.

4 Q. When did you work with your father?

5 A. In 2012.

6 Q. What type of work did you do with him?

7 A. I was a private investigator.

8 Q. And how many times did you work with your father as a
9 private investigator?

10 A. Two times.

11 Q. And when did this happen?

12 A. In 2012.

13 Q. Now, when you worked on investigations with your father,
14 were you licensed as an investigator?

15 A. Yes, I was.

16 Q. And did you have any credentials showing that you were a
17 licensed private investigator?

18 A. Yes, I had an identification card saying that I was a
19 private investigator through my father's company.

20 Q. Now, did you receive any training before working on
21 investigations with your father?

22 A. Growing up with my father, it was training every day. He
23 has been in law enforcement for as long as I can remember, and
24 I received training with him on a daily basis just, you know,
25 learning people. And he explained his job thoroughly to me,

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L. Quinonez - direct

1 and I feel like I got training in that way. And then I got
2 some particular training for the actual private investigating
3 part.

4 Q. And can you describe some of the training or techniques
5 that your father described to you about private investigation?

6 A. Being very thorough in collecting data, knowing people,
7 knowing your goals, being discrete. A lot of discretion if you
8 are studying people and you don't want them to know. And
9 basically kind of always knowing your goals and what the
10 outcome should be.

11 Q. Now, you mentioned you conducted investigations with your
12 father in 2012. Do you remember the months that you did that?

13 A. Yes. It was in May.

14 Q. Okay. So let's focus on the May 2012 time.

15 How many investigations did you conduct in May of
16 2012?

17 A. Just one.

18 Q. And what was the goal of that investigation?

19 A. The goal of that investigation was to purchase Omega
20 counterfeit watches in the Canal Street area.

21 Q. What was your role in that investigation?

22 A. My role was to document any purchases that we created and
23 actually purchase the watches.

24 Q. Other than you, Ms. Quinonez, who took part in that May
25 2012 investigation?

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L. Quinonez - direct

1 A. So other than myself, it was my father, William Quinonez,
2 Brad Cole, Rob Shea, and my partner Luigi Porco.

3 Q. All right. Now, starting with your father, what was your
4 father's role in the May 2012 investigation?

5 A. My father was recording my purchases from different angles
6 and kind of being observant on what purchases I was making.

7 Q. You mentioned someone named Brad Cole. Who is Brad Cole?

8 A. Brad Cole was the lead investigator on this case. He's the
9 one that worked with Omega and got the request from Omega to
10 conduct this investigation.

11 Q. What was Mr. Cole's role during that investigation?

12 A. He led the investigation. He told me basically what --
13 what was happening. He also was documenting different views of
14 the investigation we were conducting.

15 Q. You mentioned a gentleman by the name of Robert Shea. What
16 was his role in the investigation?

17 A. He was also observing us conduct the purchases and was
18 getting different viewpoints of the purchases we made.

19 Q. You mentioned Luigi Porco as your partner. What was
20 Mr. Porco's role in the investigation?

21 A. Luigi Porco and I were the ones who were actually making
22 the purchases. So he acted as my partner in the purchases. So
23 we were playing kind of tourists buying watches together.

24 Q. Do you recall the day that this investigation took place?

25 A. May 19th of 2012.

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L. Quinonez - direct

1 Q. Where specifically did it take place?

2 A. This was in the Canal Street area of Manhattan.

3 Q. Before you started the investigation on May 19, 2012, did
4 you talk to anyone about what was going to happen that day?

5 A. Yes. Brad Cole and my father and I met at a diner
6 beforehand where I was given the list of the locations we were
7 to visit, an overview of what we were going to do, and was
8 given some technology that I might use as an option to record
9 these transactions.

10 Q. And did you record your investigation on Canal Street on
11 May 19th, 2012?

12 A. Yes, I did.

13 Q. How did you record your investigation?

14 A. So originally Brad Cole had brought these glasses that were
15 supposed to record how we made the purchases. They were very
16 goofy and kind of really apparent, so we decided not to use
17 them, and they weren't working very well.

18 So he had a tablet computer that he had as an option.
19 And I decided, Hey, why don't I just hold it while I make the
20 transactions.

21 And he was like, Do you think you can do that?

22 And I said, Yeah, I think I can hold it pretty
23 naturally and record it, just like if I was, you know, walking
24 around using it as like a way for me to get around or whatnot.

25 Q. How old were you when you were conducting these

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L. Quinonez - direct

1 investigations?

2 A. Twenty-two.

3 Q. Now, do you recall what retail locations you visited during
4 your May 19th, 2012 investigation on Canal Street?

5 A. Yes.

6 Q. What locations did you visit?

7 A. So I visited five locations on Canal Street. 375 Canal
8 Street is the one that I remember the most.

9 Q. And why do you remember 375 Canal Street the most?

10 A. Because that's the one I've been looking at the videos and
11 seeing the recording that I have from that day.

12 Q. And in total, how many stores did you visit on May 19th,
13 2012?

14 A. Seven stores.

15 Q. And were you able to purchase watches with Omega
16 logos/trademarks on them that day?

17 A. I was, six out of the seven locations.

18 Q. Now, let's focus on your visit to 375 Canal Street.

19 Would you describe what happened during your
20 investigation at that location.

21 A. Sure.

22 So we approached the store. And there was a gentleman
23 standing in the storefront like right when we first entered.
24 And there were -- there was a watch display on the side of the
25 store, on the left side of the store.

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1 And my partner and I proceeded to look at the watches
2 and see if there were any Omega watches on display. We spoke a
3 little bit about which watches were nice or what they looked
4 like or which ones Luigi was actually looking for.

5 And then we started talking about 007 watches, James
6 Bond watches. And the clerk kind of asked us, like, Oh, yeah,
7 and engaged in conversation with Luigi. And he asked for Omega
8 or James Bond watches.

9 And then the clerk went to the back storage room,
10 brought back two watches for us to look at, both with the
11 trademark Omega on them. And we looked at the watches and kind
12 of talked over which one we wanted, bargained a little bit with
13 the sales clerk, and then made the purchase.

14 Q. And you mentioned you were discussing or asking for the
15 James Bond watch. Why were you doing that?

16 A. It was one of the Omega watches that was pretty popular at
17 this time. So as soon as we mentioned that to a few store
18 clerks, they knew what we were talking about.

19 Q. Now, were you able to purchase a watch at 375 Canal Street?

20 A. Yes, I was.

21 Q. And how much did you pay for that watch?

22 A. \$80.

23 Q. And how was that watch packaged when you purchased it?

24 A. It was in a Ziploc baggie.

25 Q. After you purchased it, was it put in any other type of

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L. Quinonez - direct

1 packaging?

2 A. It was. It was put into a black plastic bag.

3 Q. After you purchased the watch, what did you do with it?

4 A. I had a backpack that I was carrying. I had a Post-It that
5 I wrote "375" on, and then I put that inside the black bag, and
6 then put that inside my backpack.

7 Q. And why did you write "375" on a Post-It note?

8 A. It was really important to document which stores the
9 watches were purchased at, so that was why I wrote that on
10 there.

11 Q. Now, Ms. Quinonez, you mentioned you took a video of the
12 investigation on May 19th, 2012. Did you take a video at 375
13 Canal Street?

14 A. Yes, I did.

15 MR. NOYES: Your Honor, I'd like to show Ms. Quinonez
16 what we've marked as Plaintiffs' Exhibit 108A, which is her
17 video.

18 And Mr. Lam, only show Ms. Quinonez, and don't play
19 the volume please. And Mr. Lam, can you please play her the
20 first 40 seconds of the video.

21 (Video played)

22 Q. Ms. Quinonez, you've been shown the first 40 seconds of
23 Plaintiffs' Exhibit 108A. Did you review this video in advance
24 of your testimony today?

25 A. I'm sorry, I don't see anything on here.

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1 Q. Oh, you did not see that?

2 A. I did not see it, no.

3 THE DEPUTY CLERK: Play it again.

4 MR. NOYES: So Mr. Lam, please play the first 40
5 seconds of Plaintiffs' Exhibit 108A for Ms. Quinonez.

6 And after it's done, Ms. Quinonez, I'll ask you a
7 question.

8 (Video played)

9 Q. Ms. Quinonez, were you able to see the video this time?

10 A. Yes.

11 Q. Did you review this video in advance of your testimony
12 today?

13 A. Yes.

14 Q. What is that video?

15 A. This is the video of the purchase I made at 375 Canal
16 Street.

17 Q. When did you take that video?

18 A. May 19, 2012.

19 Q. How did you take that video?

20 A. I had a tablet computer in my hand.

21 Q. And where were you located when this video was taken?

22 A. I was just inside the store of 375 Canal Street.

23 Q. And we showed you the first 40 seconds, but can you
24 generally describe what the video shows?

25 A. Sure.

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1 You'll see me enter the store with my partner Porco.
2 And we'll look at the watches displayed there and engage with
3 the clerk. He will bring out two watches from the back room,
4 which we will purchase one of those Omega watches at that
5 store.

6 Q. Ms. Quinonez, does the video that we've marked as
7 Plaintiffs' Exhibit 108A accurately depict what you recorded at
8 375 Canal Street on May 19th, 2012?

9 A. Yes.

10 MR. NOYES: Your Honor, plaintiff offers Plaintiffs'
11 Exhibit 108A.

12 THE COURT: Mr. Della Fera?

13 MR. DELLA FERA: No objection, your Honor.

14 THE COURT: 108A is received in evidence.

15 (Plaintiffs' Exhibit 108A received in evidence)

16 MR. NOYES: Thank you, your Honor.

17 permission to show the video to the jury.

18 THE COURT: Yes.

19 MR. NOYES: Thank you.

20 Q. Okay. Now, Ms. Quinonez, let's walk through the video you
21 took at 375 Canal Street.

22 MR. NOYES: And Mr. Lam, start the video and play it
23 to the 11th second mark please.

24 (Video played)

25 Q. Okay. Ms. Quinonez we stopped it here. Can you describe

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L. Quinonez - direct

1 what was happening in this portion of the video?

2 A. Yes. I was approaching 375 Canal. And you see 373 Canal
3 Street right next door to it.

4 Q. Okay. And after you pass by 373 Canal Street --

5 THE DEPUTY CLERK: Now it's on.

6 MR. NOYES: Okay. So Mr. Lam, can we play that again
7 from beginning and stop it at the 11-second mark.

8 (Video played)

9 MR. NOYES: We went a little past 11 seconds.

10 Q. But, Ms. Quinonez, can you tell us what happened in that
11 portion of the video?

12 A. Yes. You see 373 Canal Street as I'm walking towards 375
13 Canal Street.

14 MR. NOYES: Now, Mr. Lam, please go back to the
15 14-second mark there.

16 Q. Can you tell me what store is shown on the screen there,
17 Ms. Quinonez?

18 A. Yes, that's 375 Canal Street.

19 Q. Is that where you conducted your investigation on May 19th,
20 2012?

21 A. Yes, it is.

22 Q. Okay.

23 MR. NOYES: Mr. Lam, can you please play the video to
24 the 38-second mark please.

25 (Video played)

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1 Q. Ms. Quinonez, what was happening in this portion of the
2 video?

3 A. We were approaching 375 Canal Street and we entered the
4 storefront.

5 Q. Now, on the screen there you see a gentleman there wearing
6 a hat and sunglasses?

7 A. Yes.

8 Q. Who was that individual?

9 A. That is the store clerk that sold us the watch.

10 Q. Now, on the video you could hear a woman's voice. Did you
11 hear that?

12 A. Yes.

13 Q. Whose voice was that?

14 A. Mine.

15 MR. NOYES: Now, Mr. Lam, please play the video to the
16 four-minute-15-second mark.

17 (Video played)

18 Q. Ms. Quinonez, can you describe what was happening in this
19 portion of the video?

20 A. Yes. My partner and I were looking at the watches on
21 display. And he proceeded to ask the clerk if he had James
22 Bond Omega watches. And the clerk is going to the back room to
23 retrieve them.

24 Q. Did the clerk respond to your partner when he asked for an
25 Omega, for a James Bond watch?

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1 A. Yes.

2 Q. What did he say?

3 A. He said -- he said yes, and then he went to the back.

4 Q. And the man holding the sunglasses in the video, who's
5 that?

6 A. That is Luigi Porco, my partner.

7 MR. NOYES: Your Honor, it's 2:30. This may be a good
8 place to stop.

9 THE COURT: All right. We're going to break now.
10 We're going to resume tomorrow morning promptly at 9
11 o'clock. Remember my instructions: Don't talk about the case.
12 Keep open mind.

13 Safe home tonight. See you tomorrow morning at 9
14 o'clock. We'll have coffee and tea.

15 Thank you very much.

16 (Jury not present)

17 (witness not present)

18 THE COURT: I have another matter, so I'm going to
19 need the courtroom.

20 MR. NOYES: Thank you, your Honor.

21 THE COURT: See you tomorrow at 9 o'clock.

22 (Adjourned to February 26, 2019 at 9 o'clock a.m.)
23
24
25

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227, 252, 253, 254, 255	
108A	103